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No. 91-522

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

SAUDI ARABIA, KING FAISAL SPECIALIST HOSPITAL, ROYSPEC,

Petitioners,

v.

SCOTT NELSON and VIVIAN NELSON,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 26, 1991
CERTIORARI GRANTED JUNE 8, 1992

TABLE OF CONTENTS

	Page
Consolidated Docket Entries	1
Complaint, dated September 27, 1988	3
Declaration of Ali S. Al-Shabrami, dated March 1, 1989, attached to Defendant Royspec's Memorandum in Support of Its Motion to Dismiss the Complaint for Lack of Jurisdiction and Venue, dated March 2, 1989	22
Advertisement for Engineering Position in Saudi Arabia, Exhibit 1 to Plaintiffs' Memorandum of Law in Opposition to Defendant Royspec's Motion to Dismiss the Complaint, dated April 13, 1989	25
Description of Engineering Position in Saudi Arabia, dated July 9, 1983, Exhibit 2 to Plaintiffs' Memorandum of Law in Opposition to Defendant Royspec's Motion to Dismiss the Complaint, dated April 13, 1989	26
Telex to Russell Dickinson from Roger L. Gerard/ Sandy Fawcett re Approval of Hiring Scott Nelson as Monitoring Systems Engineer, dated October 22, 1983, Exhibit 3 to Plaintiffs' Memorandum of Law in Opposition to Defendant Royspec's Motion to Dismiss the Complaint, dated April 13, 1989	28
Declaration of Ali S. Al-Shabrami, dated April 27, 1989, attached to Reply Memorandum of Defendant Royspec in Support of Its Motion to Dismiss the Action for Lack of Jurisdiction and Venue, dated May 1, 1989	29
Declaration of Hameed Manejwala, dated April 28, 1989, attached to Reply Memorandum of Defendant Royspec in Support of Its Motion to Dismiss the Action for Lack of Jurisdiction and Venue, dated May 1, 1989	31
Affidavit of Scott Nelson, dated May 20, 1989, attached to Plaintiffs' Response to Defendant Royspec's Reply Memorandum of May 1, 1989, dated May 22, 1989	33

TABLE OF CONTENTS—Continued

Page

Response to Defendant's Request for Admissions, dated November 29, 1988, and Request for Admissions, dated November 2, 1988, Exhibit 2 to Defendants Kingdom of Saudi Arabia and King Faisal Specialist Hospital's Motion to Dismiss the Complaint, dated June 26, 1989 35

M.I.T. Diploma, Exhibit 4 to Defendants Kingdom of Saudi Arabia and King Faisal Specialist Hospital's Motion to Dismiss the Complaint, dated June 26, 1989 39

Employment Contract, signed November 11, 1983, Exhibit 5 to Defendants Kingdom of Saudi Arabia and King Faisal Specialist Hospital's Motion to Dismiss the Complaint, dated June 26, 1989 40

Declaration of Frederick G. Dutton, dated June 23, 1989, Exhibit 6 to Defendants Kingdom of Saudi Arabia and King Faisal Specialist Hospital's Motion to Dismiss the Complaint, dated June 26, 1989 49

Problems Confronting American Businessmen in Saudi Arabia: Hearing Before the Subcomm. on Europe and the Middle East of the Comm. on Foreign Affairs, 100th Congress, 1st Session 21-29, 110-11, 174-75 (1987), Exhibit 7 to Defendants Kingdom of Saudi Arabia and King Faisal Specialist Hospital's Motion to Dismiss the Complaint, dated June 26, 1989 51

Affidavit of Abdullah Jary Assabhan, dated June 21, 1989, Exhibit 8 to Defendants Kingdom of Saudi Arabia and King Faisal Specialist Hospital's Motion to Dismiss the Complaint, dated June 26, 1989 67

Agreement between The Royal Cabinet of the Kingdom of Saudi Arabia and Hospital Corporation of America, Ltd., dated August 26, 1973, Exhibit 2 to Notice of Filing in Support of Plaintiffs' Memorandum in Opposition to Defendant Royspec's Motion to Dismiss Complaint, dated June 29, 1989 70

TABLE OF CONTENTS—Continued

Page

Amendment No. 3 to the Agreement between The Royal Cabinet of the Kingdom of Saudi Arabia and Hospital Corporation of America, Ltd., dated August 31, 1982, Exhibit 3 to Notice of Filing in Support of Plaintiffs' Memorandum in Opposition to Defendant Royspec's Motion to Dismiss Complaint, dated June 29, 1989 85

Opinion of the United States District Court for the Southern District of Florida, dated August 11, 1989.. 91

Opinion of the United States Court of Appeals for the Eleventh Circuit, dated February 21, 1991 99

Statement of Interest of the United States in Support of Rehearing and Suggestion for Rehearing En Banc, dated April 1, 1991 121

Order of the United States Court of Appeals for the Eleventh Circuit Denying Petition for Rehearing and Suggestion for Rehearing En Banc, entered on July 1, 1991 133

CONSOLIDATED DOCKET ENTRIES

DATE FILED/ ENTERED	DOCUMENT
September 27, 1988	Complaint
March 3, 1989	Defendant Royspec's Motion to Dismiss the Complaint for Lack of Jurisdiction and Venue
June 27, 1989	Defendants Kingdom of Saudi Arabia and King Faisal Specialist Hospital's Motion to Dismiss the Complaint
August 11, 1989	Memorandum Opinion of the United States District Court for the Southern District of Florida
August 11, 1989	Order of the United States District Court for the Southern District of Florida Dismissing This Case for Lack of Subject-Matter Jurisdiction
September 11, 1989	Notice of Appeal by Plaintiffs Scott and Vivian Nelson from Order of Dismissal Entered August 11, 1989
February 21, 1991	Judgment of the United States Court of Appeals for the Eleventh Circuit and Order Reversing the Judgment of the United States District Court for the Southern District of Florida
February 21, 1991	Opinion of the United States Court of Appeals for the Eleventh Circuit
April 1, 1991	Petition for Rehearing and Suggestion of Rehearing In Banc
April 2, 1991	Statement of Interest of the United States in Support of Rehearing and Suggestion for Rehearing En Banc
July 1, 1991	Order of the United States Court of Appeals for the Eleventh Circuit Denying Petition for Rehearing and Suggestion of Rehearing In Banc

DATE FILED/ ENTERED	DOCUMENT
July 11, 1991	Mandate of the United States Court of Appeals for the Eleventh Circuit
July 19, 1991	Order of the United States Court of Appeals for the Eleventh Circuit Recalling and Staying Mandate Pending Petition for a Writ of Certiorari
September 26, 1991	Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit
November 18, 1991	Order of the United States Supreme Court Inviting the Solicitor General to File a Brief in this Case
May 18, 1992	Brief for the United States as Amicus Curiae
June 8, 1992	Order of the United States Supreme Court Granting Certiorari

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No: 88-1791-CIV-TES

SCOTT NELSON and VIVIAN NELSON, individually and as husband and wife,
Plaintiffs,

vs.

SAUDI ARABIA, KING FAISAL SPECIALIST HOSPITAL, a Saudi hospital in Riyadh, Saudi Arabia, and ROYSPEC.
Defendants.

COMPLAINT

COME NOW the Plaintiffs, SCOTT NELSON and VIVIAN NELSON, by and through their undersigned attorney and sue the Defendant, SAUDI ARABIA, for compensatory damages, and the Defendants, KING FAISAL SPECIALIST HOSPITAL and ROYSPEC, for compensatory and punitive damages, and state as follows:

FACTUAL ALLEGATIONS AGAINST SAUDI ARABIA

1. This is a civil action for compensatory damages in excess of ten thousand dollars ($10,000.00).

2. This court exercises original jurisdiction over this matter, and the parties therein, pursuant to 28 USC § 1331, the Foreign Sovereign Immunity Act, 28 USCS § 1605 *et seq.*, the Florida Long Arm Statute, F.S. 48.181 *et seq.*, and the Alien Tort Statute, 28 USC § 1350.

3. Plaintiff, SCOTT NELSON, was and is at all times material hereto, *sui juris.*

4. Plaintiff, VIVIAN NELSON, was and is at all times material hereto, *sui juris*. At all times material hereto, VIVIAN NELSON, was and is the wife of Plaintiff, SCOTT NELSON, cohabiting together in a lawful marriage relationship.

5. Defendant SAUDI ARABIA, is a foreign state which does maintain and run the King Faisal Specialist Hospital (hereafter referred to as KFSH) located in Riyadh, Saudi Arabia; and which conducts through a separate legal person known as Royspec (and other agents), business activities in the United States including: employee recruitment, training and orientation, and execution of employment contracts, as well as contracts for insurance for the KFSH.

6. During November 1983, Plaintiff NELSON was recruited in Miami, Florida by Defendant or its agents, to fill the position of Monitoring Systems Engineer at KFSH. The function of this position is to inspect and monitor all hospital facilities, equipment, utilities and maintenance systems to insure the safety of patients, hospital staff, and others.

7. On or about November 29, 1983, NELSON entered into a employment agreement in Miami, Florida with KFSH whereby NELSON would accept the position of Monitoring Systems Engineer at KFSH in Riyadh, Saudi Arabia. As part of said agreement, Defendant provided Plaintiff with a policy of insurance for major medical benefits.

8. On December 7, 1983, NELSON was flown to Riyadh, Saudi Arabia to commence his employment.

9. On or about March 20, 1984, while monitoring the KFSH facilities, in the course of his official duties, NELSON discovered safety hazards at the hospital.

10. Thereafter, Plaintiff repeatedly reported to hospital officials the above mentioned safety hazards and subsequently did report said safety hazards to a special in-

vestigative body of the Saudia Arabian Government, "The Royal Commission."

11. As a direct and proximate result of these actions, the Plaintiff was arbitrarily detained in Saudi Arabia against his will, despite his requests to be allowed to leave the country. He was summoned, on or about September 27, 1984, by agents or employees of KFSH to the hospital's security office from which he was transported to a jail cell, shackled, tortured and beaten by agents or employees of SAUDI ARABIA; acting in their official capacity.

12. In total, NELSON was held captive for 39 days, during which time he was repeatedly interrogated, in Arabic, by police investigators, and was forced to sign Arabic papers, which were not translated to him. Further, Plaintiff was never advised of any charges nor accused of any crimes. Subsequent to his release, Plaintiff was again prevented, against his will, from leaving the country of Saudi Arabia.

13. During the 39 days in which Plaintiff, SCOTT NELSON, was held captive, he was held incommunicado, and his family was not advised of his whereabouts for several days. Once his wife, VIVIAN NELSON, was advised of his situation, she was informed by an agent of SAUDI ARABIA that he could be released in exchange for sexual favors.

COUNT I—NEGLIGENCE

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

14. As recruiter and/or employer of the Plaintiff, Defendant owed to the Plaintiff the duty to exercise due care to prevent injury to the Plaintiff, including the duty to adequately warn and instruct him of the hidden dangers associated with employment.

15. At the time it recruited and employed the Plaintiff, as well as during the time the Plaintiff was reporting safety violations, SAUDI ARABIA knew or should have known that officials of the Saudi government, and officials of Saudi institutions such as KFSH, have, and sometimes exercise, the power to have persons summarily arrested, detained, and physically abused, without legal cause.

16. SAUDI ARABIA knew, or should have known, at the time it recruited and employed the Plaintiff, that the employees and/or officials of the KFSH would be likely to take severe retaliatory action against NELSON if he reported and/or attempted to remedy, and/or disclose to others any health-related or other hazards or problems which he discovered in KFSH.

17. Despite SAUDI ARABIA's knowledge of the above factors, Defendant did breach its duty of care to the Plaintiff in that it took no action to warn NELSON of the dangers of his job at KFSH, at the time it recruited him, at the time he began his employment, or at the time he was engaged in reporting the safety hazards at the hospital.

COUNT II—BATTERY

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

18. Defendant, SAUDI ARABIA, by and through its agents or employees, acting in their official capacity, did intentionally, willfully, unlawfully, maliciously, recklessly, and with evil design and intent, strike and assault the body of the Plaintiff, SCOTT NELSON, without his consent, and thereby cause great bodily harm, permanent disability, and permanent disfigurement.

COUNT III—UNLAWFUL DETAINMENT

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

19. Article 13 of the International Bill of Human Rights, adopted by the United Nations General Assembly on the 10th day of December, 1948, states, in relevant portion:

> "Everyone has the right to leave any country, including his own, and to return to his country."

20. Defendant, SAUDI ARABIA, in prohibiting the Plaintiff from exiting the country, as was his legal right, has willfully and overtly breached said provision of international law.

COUNT IV—WRONGFUL ARREST AND IMPRISONMENT

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

21. Article 14 of the United Nation's International Covenant on Civil and Political Rights, adopted by the General Assembly on the 16th day of December, 1966 and entered into force on the 23rd day of March, 1976, establishes internationally accepted legal standards of care for those who stand accused of crimes. It states, in relevant portion:

> In the determination of a criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
>
> a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
>
> b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
>
> d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;

f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

g) Not to be compelled to testify against himself or to confess guilt.

22. By intentionally, willfully, unlawfully, maliciously, recklessly, and with evil design and intent, restraining the Plaintiff against his will, by not providing an interpreter, or speaking to Plaintiff in a language he understood, by either not making the charges clear to him, or not making charges, and by compelling Plaintiff to sign statements which he could not understand, Defendant SAUDI ARABIA has willfully and overtly violated the responsibilities and duties of care which it owed to Plaintiff under said provision of international law.

COUNT V—INHUMAN TORTURE

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

23. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on the 9th day of December, 1975, defines torture as follows:

> ". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.

24. Article 5 of the United Nation's International Bill of Human Rights, states:

> "No one shall be subjected to torture or to cruel, inhuman or degrading punishment."

25. Article 7 of the United Nation's International Covenant on Civil and Political Rights, states, in relevant portion: "No one shall be subjected to cruel, inhuman treatment or punishment."

26. The Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on the 17th day of December, 1979, provides universally accepted minimum standards for officers of the law, and states, in relevant portion:

> Article 2: In the performance of their duty, law enforcement officials shall respect and maintain human dignity and maintain and uphold the human rights of all persons.
>
> Article 3: Law enforcement officials may use force only when strictly necessary and [only] to the extent required for the performance of their duty.
>
> Article 5: No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war, or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

27. In addition, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on the 10th day of December, 1984, both contain statements explicitly prohibiting the sort of treatment which was suffered by Plaintiff, SCOTT NELSON.

COUNT VI—DISRUPTION OF NORMAL FAMILY LIFE

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

28. Article 17 of the International Covenant on Civil and Political Rights states:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor or reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

29. Under the definition of torture found in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Inhuman or Degrading Treatment or Punishment (see above) the solicitation of sexual favors from Plaintiff VIVIAN NELSON in exchange for her husband's freedom constitutes torture because it caused severe mental pain and anguish in an attempt to coerce her into an action. Further, this treatment was both clearly degrading and an arbitrary and unlawful attack and interference on the Plaintiffs' family life, honor and human dignity.

30. As such, Defendant's actions constitute a willful and overt breach of said provision of international law.

COUNT VII—MENTAL ANGUISH

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

31. Article 92 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations General Assembly on the 13th day of May, 1977, states:

> An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communication with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

32. In addition, the state of incommunicado imposed by the Defendant, SAUDI ARABIA, caused both Plaintiffs great mental anguish. Defendant's actions constitute a willful and overt violation of the responsibilities and duties of care which it owed to both Plaintiffs under international law.

33. As direct and proximate results of the Defendant's tortious acts or omissions and willful and overt violations of international law, as hereinabove alleged, Plaintiff SCOTT NELSON has suffered the following personal injury, damage to, or loss of property:

A. Permanent personal injury within a reasonable degree of medical probability.

B. Pain and suffering.

C. Permanent disability.

D. Significant permanent disfigurement.

E. Mental anguish, arbitrary and unlawful interference of normal family life, and attack upon his honor.

F. Loss of capacity for the enjoyment of life.

G. Loss of past and future earnings.

H. Hospital and medical bills for the treatment of his injuries.

COUNT VIII—DERIVATIVE CLAIM

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

34. At all times material hereto, Plaintiff, VIVIAN NELSON, was and is the wife of Plaintiff, SCOTT NELSON, cohabitating together in a lawful marriage relationship.

35. As direct and proximate results of the tortious acts, or omissions and violations of international law committed by the Defendant as hereinabove alleged, the Plaintiff, VIVIAN NELSON, has sustained the following damages:

A. Loss of support and services of her husband.

B. Loss of the care, comfort and society of her husband.

C. Loss of consortium.

D. Pain and suffering and mental anguish.

E. Arbitrary or unlawful interference of normal family life, and unlawful attack upon her honor as a married woman.

WHEREFORE, the Plaintiffs, SCOTT NELSON and VIVIAN NELSON, demand judgment against the Defendant, SAUDI ARABIA, for compensatory damages, exclusive of interest and costs, and demand a trial by jury of all issues so triable as of right.

FACTUAL ALLEGATIONS AGAINST KING FAISAL SPECIALIST HOSPITAL

36. This is a civil action for compensatory and punitive damages in excess of ten thousand dollars ($10,000.00).

37. This court exercises original jurisdiction over this matter, and the parties therein, pursuant to 28 USC § 1331, the Foreign Sovereign Immunity Act, 28 USCS § 1605 *et seq.*, the Florida Long Arm Statute, F.S. 48.181 *et seq.*, and the Alien Tort Statute, 28 USC § 1350.

38. Plaintiff, SCOTT NELSON, was and is at all times material hereto, *sui juris*.

39. Plaintiff, VIVIAN NELSON, was and is at all times material hereto, *sui juris*.

40. Defendant KING FAISAL SPECIALIST HOSPITAL (hereafter referred to as KFSH), a separate legal person and an agent, instrumentality and alter ego of the sovereign nation of Saudi Arabia. As a regular part of its business activities in the State of Florida and elsewhere in the United States, KFSH, through its agents, conducts commercial transactions including employee recruitment, advertising, employee training and orientation, and execution of employee contracts, as well as contracts for insurance.

41. During November 1983, Plaintiff NELSON, through published advertisement, was recruited in Miami, Florida by Defendant or its agents to fill the position of Monitoring Systems Engineer at KFSH. The function of this position is to inspect and monitor all hospital facilities, equipment, utilities and maintenance systems to insure the safety of patients, hospital staff, and others.

42. On or about November 29, 1983, NELSON entered into an employment agreement in Miami, Florida with KFSH whereby NELSON would accept the position of Monitoring Systems Engineer at KFSH in Riyadh, Saudi Arabia. As part of said agreement, Defendant provided Plaintiff with a policy of insurance for major medical benefits.

43. On December 7, 1983, NELSON was flown to Riyadh, Saudi Arabia to commence his employment.

44. On or about March 20, 1984, while monitoring the KFSH facilities, in the course of his official duties, NELSON discovered safety hazards at the hospital.

45. Thereafter, Plaintiff repeatedly reported to hospital officials the above mentioned safety hazards and subsequently did report said safety hazards to a special investigative body of the Saudi Arabian Government, "The Royal Commission."

46. As a direct and proximate result of these actions, on or about September 27, 1984, Plaintiff was summoned by agents or employees of KFSH to the hospital's security office from which he was transported to a jail cell, shackled, tortured and beaten by persons acting at the direction, instigation, provocation, instruction or request of Defendant.

COUNT IX—NEGLIGENCE

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

47. As recruiter and/or employer of the Plaintiff, Defendant owed to the Plaintiff the duty to exercise due care to prevent injury to the Plainitff, including the duty to adequately warn and instruct him of the hidden dangers associated with the employment.

48. At the time it recruited and employed the Plaintiff, as well as during the time the Plaintiff was reporting safety violations, KFSH knew or should have known that officials of the Saudi Government, and officials of Saudi institutions such as KFSH, have, and sometimes exercise, the power to have persons summarily arrested, detained, and physically abused, without legal cause.

49. KFSH knew, or should have known, at the time it recruited and employed the Plaintiff, that the employees and/or officials of the KFSH would be likely to take severe retaliatory action against NELSON if he reported and/or attempted to remedy, and/or disclosed to others any health-related or other hazards or problems which he discovered in KFSH.

50. Despite KFSH's knowledge of the above factors, KFSH did breach its duty of care to the Plaintiff in that it took no action to warn NELSON of the dangers of his job at KFSH, at the time it recruited him, at the time he began his employment, or at the time he was engaged in reporting the safety hazards at the hospital.

COUNT X—BATTERY

The Plainitffs reaver each and every allegation as if fully set forth herein, and would further state:

51. Defendant, KFSH, by and through its agents or employees, did intentionally, willfully, unlawfully, maliciously, recklessly, and with evil design and intent, strike and assault the body of the Plaintiff, SCOTT NELSON, without his consent, and thereby cause great bodily harm, permanent disability and permanent disfigurement.

52. As a direct and proximate result of the Defendant's malfeasance, as stated above, SCOTT NELSON, has sustained the following damages:

A. Permanent personal injury within a reasonable degree of medical probability.

B. Pain and suffering.

C. Permanent disability.

D. Significant permanent disfigurement.

E. Mental anguish, arbitrary or unlawful interference of normal family life, and unlawful attack upon his honor.

F. Loss of capacity for the enjoyment of life.

G. Loss of past and future earnings.

H. Hospital and medical bills for the treatment of his injuries.

COUNT XI—FALSE IMPRISONMENT

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

53. Defendant willfully, unlawfully, maliciously, recklessly, and with evil design intentionally completely restrained and imprisoned Plaintiff, NELSON, against his will; thereby depriving him of his liberty without probably cause or legal justification.

COUNT XII—DERIVATIVE CLAIM

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

54. At all times material hereto, Plaintiff, VIVIAN NELSON, was and is the wife of Plaintiff, SCOTT NELSON, cohabiting together in a lawful marriage relationship.

55. As direct and proximate results of the tortious acts or omissions of the Defendant as hereinabove alleged, the Plaintiff, VIVIAN NELSON, has sustained the following damages:

A. Loss of support and services of her husband.

B. Loss of the care, comfort and society of her husband.

C. Loss of consortium.

D. Pain and suffering and mental anguish.

E. Arbitrary or unlawful interference of normal family life, and unlawful attack upon her honor as a married woman.

WHEREFORE, the Plaintiffs, SCOTT NELSON and VIVIAN NELSON, demand judgment against the Defendant, KING FAISAL SPECIALIST HOSPITAL, for compensatory and punitive damages, exclusive of interest and costs, and demand a trial by jury of all issues so triable as of right.

FACTUAL ALLEGATIONS AGAINST ROYSPEC

56. This is a civil action for compensatory and punitive damages in excess of Ten Thousand Dollars ($10,000.00).

57. This court exercises original jurisdiction over this matter, and the parties therein, pursuant to 28 USC § 1331, the Foreign Sovereign Immunity Act, 28 USCS

§ 1605 *et seq.*, the Florida Long Arm Statute, F.S. 48.181 *et seq.*, and the Alien Tort Statute, 28 USC § 1350.

58. Plaintiff, SCOTT NELSON, was and is at all times material hereto, *sui juris.*

59. Plaintiff, VIVIAN NELSON, was and is at all times material hereto, *sui juris.*

60. Defendant ROYSPEC is a separate legal person and an agent, instrumentality and alter ego of the sovereign nation of Saudi Arabia and of the King Faisal Specialist Hospital (hereinafter referred to as KFSH) located in Riyadh, Saudi Arabia. Defendant ROYSPEC does maintain offices in Harmans, Maryland, and, as a regular part of its business activities in the State of Florida and elsewhere in the United States, ROYSPEC through its agents, conduct commercial transactions including employee recruitment, advertising, employee training and orientation, and execution of employee contracts, as well as contracts for insurance.

61. During November of 1983, Plaintiff NELSON, through published advertisement, was recruited in Miami, Florida by Defendant or its agents, to fill the position of Monitoring Systems Engineer at ROYSPEC. The function of this position is to inspect and monitor all hospital facilities, equipment, utilities and maintenance systems to insure the safety of patients, hospital staff, and others.

62. On or about November 29, 1983, NELSON entered into an employment agreement in Miami, Florida with ROYSPEC whereby NELSON would accept the position of Monitoring Systems Engineer at KFSH in Riyadh, Saudi Arabia. As part of said agreement, Defendant provided Plaintiff with a policy of insurance for major medical benefits.

63. On December 7, 1983, NELSON was flown to Riyadh, Saudi Arabia to commence his employment.

64. On or about March 20, 1984, while monitoring the KFSH facilities, in the course of his official duties, NELSON discovered safety hazards at the hospital.

65. Thereafter, Plaintiff repeatedly reported to hospital officials the above mentioned safety hazards and subsequently did report said safety hazards to a special investigative body of the Saudi Arabian Government, "The Royal Commission."

66. As a direct and proximate result of these actions, on or about September 27, 1984, Plaintiff was summoned by agents or employees of ROYSPEC to the hospital's security office from which he was transported to a jail cell, shackled, tortured and beaten by persons acting at the direction, instigation, provocation, instruction or request of Defendant.

COUNT XIII—NEGLIGENCE

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

67. As recruiter and/or employer of the Plaintiff, Defendant owed to the Plaintiff the duty to exercise due care to prevent injury to the Plaintiff, including the duty to adequately warn and instruct him of the hidden dangers associated with the employment.

68. At the time it recruited and employed the Plaintiff, as well as during the time the Plaintiff was reporting safety violations, ROYSPEC knew or should have known that officials of the Saudi Government, and officials of Saudi institutions such as KFSH, have, and sometimes exercise, the power to have persons summarily arrested, detained, and physically abused, without legal cause.

69. ROYSPEC knew, or should have known, at the time it recruited and employed the Plaintiff, that the employees and/or officials of the KFSH would be likely to

take severe retaliatory action against NELSON if he reported and/or attempted to remedy, and/or disclosed to others any health-related or other hazards or problems which he discovered at KFSH.

70. Despite ROYSPEC's knowledge of the above factors, ROYSPEC did breach its duty of care to the Plaintiff in that it took no action to warn NELSON of the dangers of his job at KFSH, at the time it recruited him, at the time he began his employment, or at the time he was engaged in reporting the safety hazards at the hospital.

COUNT XIV—BATTERY

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

71. Defendant, ROYSPEC, by and through its agents or employees, did intentionally, willfully, unlawfully, maliciously, recklessly, and with evil design and intent, strike and assault the body of the Plaintiff, SCOTT NELSON, without his consent, and thereby cause great bodily harm, permanent disability and permanent disfigurement.

72. As a direct and proximate result of the Defendant's malfeasance, as stated above, SCOTT NELSON, has sustained the following damages:

A. Permanent personal injury within a reasonable degree of medical probability.

B. Pain and suffering.

C. Permanent disability.

D. Significant permanent disfigurement.

E. Mental anguish, arbitrary or unlawful interference of normal family life, and unlawful attack upon his honor.

F. Loss of capacity for the enjoyment of life.

G. Loss of past and future earnings.

H. Hospital and medical bills for the treatment of his injuries.

COUNT XV—FALSE IMPRISONMENT

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

73. Defendant willfully, unlawfully, maliciously, recklessly, and with evil design intentionally completely restrained and imprisoned Plaintiff, NELSON, against his will; thereby depriving him of his liberty without probably cause or legal justification.

COUNT XVI—DERIVATIVE CLAIM

The Plaintiffs reaver each and every allegation as if fully set forth herein, and would further state:

74. At all times material hereto, Plaintiff, VIVIAN NELSON, was and is the wife of Plaintiff, SCOTT NELSON, cohabiting together in a lawful marriage relationship.

75. As direct and proximate results of the tortious acts or omissions of the Defendant as hereinabove alleged, the Plaintiff, VIVIAN NELSON, has sustained the following damages:

A. Loss of support and services of her husband.

B. Loss of the care, comfort and society of her husband.

C. Loss of consortium.

D. Pain and suffering and mental anguish.

E. Arbitrary or unlawful interference of normal family life, and unlawful attack upon her honor as a married woman.

WHEREFORE, the Plaintiffs, SCOTT NELSON and VIVIAN NELSON, demand judgment against the Defendant, ROYSPEC, for compensatory and punitive dam-

ages, exclusive of interest and costs, and demand a trial by jury of all issues so triable as of right.

JORGE A. DUARTE, P.A.
2503 Southwest 27th Avenue
Miami, FL 33133
(303) 285-2040

/s/ Jorge A. Duarte
JORGE A. DUARTE, ESQUIRE
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

(Title Omitted in Printing)

DECLARATION

I, ALI S. AL-SHABRAMI, being first duly sworn upon my oath, do affirm and say:

1. I am over the age of 18 years, have personal knowledge of the facts stated herein, except as otherwise set forth, and am competent to be a witness. This declaration is submitted in support of ROYSPEC's motion to dismiss the above-referenced action and is not intended to waive any diplomatic or sovereign immunity conferred by law.

2. I am General Director of ROYSPEC Purchasing Services ("ROYSPEC"), a non-profit legal entity formed, owned and controlled by the government of Saudi Arabia to perform purchasing functions for the King Faisal Specialist Hospital and Research Center of Riyadh, Saudi Arabia. The name ROYSPEC is an abbreviation of "Royal Specialists." ROYSPEC has only one office in the United States located in Harmans, Maryland.

3. The King Faisal Specialist Hospital and Research Center has been in operation for approximately 15 years. It provides free services to government officials and to individuals with serious, often terminal diseases. The Hospital provides medical services such as cancer treatment, bone marrow transplants, and kidney dialysis and transplants. These services are provided to patients free of charge by the Saudi government.

4. The Hospital is wholly owned by the Kingdom of Saudi Arabia. It is governed by the Ministry of Health and the Royal Cabinet, and its budget is set and controlled by the Ministry of Finance.

5. ROYSPEC operates in Maryland and purchases supplies for King Faisal Specialist Hospital and Research Center. Physicians' requests for medical supplies and equipment are conveyed to Hospital administrators who, once the requests are approved, transmit a requisition to ROYSPEC in the United States. ROYSPEC purchases the requested items, checks them for accuracy and then ships them to the Hospital in Saudi Arabia. ROYSPEC usually purchases supplies by means of electronic and telephonic communication; thus its employees are not required to leave the office in Maryland.

6. ROYSPEC does not maintain an office nor have any employees in Florida. Nor does ROYSPEC engage in any regular and substantial course of commerce in Florida. ROYSPEC's sole contacts with Florida consist of occasional purchases of supplies through telephone or mail orders from businesses located in Florida. None of these contacts are in any way related to the claims asserted by Scott Nelson. ROYSPEC does not keep any bank accounts, property, inventory, warehouses or capital equipment in Florida, nor does it have a telephone listing or mailing address in that state.

7. The Plaintiff asserts that he was recruited in Florida by the Defendants or their agents. ROYSPEC, however, does not assume any responsibility for soliciting or contracting with new King Faisal Specialist Hospital and Research Center employees, such as Mr. Nelson. Such personnel recruiting and contracting in the United States are performed by Hospital Corporation of America Limited, pursuant to contract with King Faisal Specialist Hospital and Research Center.

8. ROYSPEC is not party to the Hospital Corporation of American contract governing recruiting and was not a party to the King Faisal Specialist Hospital and Research Center contract with Scott Nelson. A copy of the contract between Mr. Nelson and the Hospital, which was obtained from the files of the Hospital and not even available from ROYSPEC, is attached hereto as Exhibit 1.

9. ROYSPEC has not incorporated in Maryland or in any other state, nor does it intend to do so.

10. ROYSPEC enters into contracts and can sue and be sued in its own name.

11. ROYSPEC is not a general or managing agent of King Faisal Specialist Hospital and Research Center, nor is it authorized to receive service of process for the Hospital.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 1st day of March in Harmans, Maryland.

Date March 1, 1989 /s/ Ali S. Al-Shabrami
ALI S. AL-SHABRAMI, PhD

EXHIBIT 1

YOUR PASSPORT TO
INTERNATIONAL
OPPORTUNITIES

MONITORING SYSTEMS ENGINEER

The King Faisal Specialist Hospital and Research Centre in Riyadh, Saudi Arabia has an opening in the Engineering/Utilities Maintenance Department. This beautifully landscaped medical city located in the heart of the Kingdom is dedicated to providing the highest level of health care for the people of Saudi Arabia.

Monitoring Systems Engineer coordinates development, modification, planning, implementation, maintenance, and related technical activities associated with fire alarm/protection, HVAC, medical/radiation sensors, security and other monitoring/control systems. A B.S. in Electrical Engineering with strong practical knowledge of electrical/mechanical systems and facilities engineering is essential. Candidates must have five years engineering experience with at least two years in the design, modification, installation and maintenance of electronic monitoring and control systems. Honeywell Delta knowledge and large scale hospital related experience is desirable.

Persons interested in this position will be employed by, have a contract with, and work directly for the Government of the Kingdom of Saudi Arabia.

Commitments are for 24 months. Benefits are excellent and include free furnished housing, air transportation, 30 days paid annual leave, bonus pay, tax advantages and more.

For further information and/or to apply, please send resume to: Don Alexander, Senior International Representative, HCA International Company, P.O. Box 550, Nashville, TN 37202. An Equal Opportunity Employer.

EXHIBIT 2

King Faisal Specialist Hospital And Research Centre	Job Description

JOB TITLE:

Monitoring Systems Engineer — GRADE: 10

RESPONSIBLE TO:

Assistant Administrator, Utilities and Maintenance

BASIC FUNCTION:

Responsible for the development and expansion of electronic monitoring and control systems capabilities. Coordinates development, modification, planning, implementation, maintenance and related technical activities associated with fire alarm/protection, security, HVAC, medical/radiation sensors and other monitoring/control systems.

PRINCIPAL DUTIES:

Analyzes and evaluates existing systems. Identifies alternatives and solutions in accordance with budget, objectives and policies.

Recommends modifications of existing equipment and the purchase and installation of new equipment.

Coordinates technical activities with appropriate personnel to assure proper planning, specifications and installation of equipment and systems.

Plans, schedules and supervises maintenance activities. Establishes preventive maintenance program. Assures proper calibration and functioning of systems.

Supervises, trains and evaluates assigned technical/maintenance staff.

Organizes and maintains technical records, reports, plans, drawings, manuals, etc.

Interprets and implements rules and regulations. Provides technical guidance to users of systems and specialized sensors. Assures compliance with safety regulations.

Submit periodic reports on status and progress of activities.

Troubleshoots problems and implements corrective action.

Performs special projects and studies.

Performs any other duties as assigned.

EDUCATION:

B.S. in Electrical Engineering *preferred.* Strong practical knowledge of electrical/mechanical systems and facilities engineering is essential.

EXPERIENCE & OTHER QUALIFICATIONS

Five (5) years engineering experience with at least two (2) years in the design, modification, installation and maintenance of electronic monitoring and control systems, including fire alarm, security, HVAC/energy management and related systems is *required.* Honeywell Delta knowledge and large scale hospital related experience desirable.

Approved/Date 9 July 83
/s/ [Illegible]

Prepared by William R. Bufkins

JOB Code 016

Department Engineering/Utilities & Maintenance

EXHIBIT 3

OCT 23 1983 05014

HCA CORP NAS

201050 ROSPEC SJ

22 OCTOBER 1983

TLX. NO. 1549/31023

FOR: RUSSELL DICKINSON

FROM: ROGER L. GERARD/SANDY FAWCETT

REF: L-64010-01, UCL 8453, MONITORING SYSTEMS ENGINEER, UTILITIES/MAINT. SVCS.

APPROVAL MEMO UMD 3257 M SIGNED BY DR. FETEIH TO HIRE SCOTT NELSON AS GRADE 10, STEP 4, AGAINST THE ABOVE REFERENCED POSITION. ADDRESS IS AS FOLLOWS: 5651 WASHINGTON ST, A-10, HOLLYWOOD, FL 33023. MR. NELSON WILL BE RETURNING TO USA 25 OCT 83.

COPY OF APPROVAL MEMO WILL BE IN POUCH OF 23 OCT 83.

THANKS.

REGARDS.
SPECIALIST+

201050 ROSPEC SJI
HCA CORP NAS

REPLY VIA ITT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

(Title Omitted in Printing)

DECLARATION

I, ALI S. AL-SHABRAMI, being first duly sworn upon my oath, do affirm and say:

1. I am over the age of 18 years, have personal knowledge of the facts stated herein, except as otherwise set forth, and am competent to be a witness. This declaration is submitted in support of ROYSPEC's motion to dismiss the above-referenced action and is not intended to waive any diplomatic or sovereign immunity conferred by law.

2. I have reviewed the opposition filed by the plaintiff in response to ROYSPEC's motion to dismiss the complaint against it. The plaintiff contends that ROYSPEC was a recipient of the documents attached as exhibits to his brief. These documents, which reflect communications between King Faisal Specialist Hospital and Hospital Corporation of America ("HCA") *do not* state or indicate in any way that copies of those documents were forwarded to ROYSPEC.

3. The plaintiff mistakenly contends that the reference to "ROSPEC SJ" contained on each of the exhibits is a reference to the defendant, ROYSPEC. That is absolutely incorrect. The letters "ROSPEC SJ" are used by King Faisal Specialist Hospital to identify its international telex number in Riyadh, Saudi Arabia. The telex number and telephone number reflected on those documents correspond to King Faisal Specialist Hospital, and

not *ROYSPEC*. ROYSPEC's telex number is 197528 and its telephone number is (301) 850-0100. To my knowledge, the stationery used in Plaintiff's Exhibit 5, identified by the plaintiff as "ROYSPEC's own stationery" is the stationery of King Faisal Specialist Hospital, located in Riyadh, Saudi Arabia, as the heading on the page clearly reflects. A copy of *ROYSPEC's* official stationery is attached hereto as Exhibit 1.

4. The plaintiff claims that my prior statement denying ROYSPEC's involvement in U.S. recruiting for the hospital "strains credulity" because the hospital does not have any other office in the U.S. The hospital does not need a U.S. recruiting office, however, because it has a contract with HCA vesting exclusive responsibility for recruiting in the U.S. Further, ROYSPEC does not have a contract with HCA because ROYSPEC recruits it own employees to work at ROYSPEC's office in the U.S.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27th day of April in Washington, D.C.

4-27-89
Date

/s/ Ali S. Al-Shabrami
ALI S. AL-SHABRAMI, PhD

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

(Title Omitted in Printing)

DECLARATION

I, HAMEED MANEJWALA, declare as follows:

1. I am over the age of 18 years, have personal knowledge of the facts stated herein except as otherwise set forth, and am competent to be a witness. This declaration is submitted in support of ROYSPEC's motion to dismiss the above-referenced action and is not intended to waive any diplomatic or sovereign immunity conferred by law.

2. I am the head of the Accounting Department for ROYSPEC Purchasing Services ("ROYSPEC") in Harmans, Maryland. I have been employed at ROYSPEC since December 10, 1980, and have at all times had first-hand familiarity with the activities and responsibilities of ROYSPEC in the United States.

3. Prior to 1979, Hospital Corporation of America ("HCA") was under contract to perform all of the recruiting and purchasing functions for King Faisal Hospital (the "hospital") in the United States. In 1979, the hospital created "ROYSPEC Purchasing Services" to assume responsibility for the purchasing function in the United States. The recruiting function was still reserved to HCA under contract, however.

4. Since I was employed by ROYSPEC in 1983 when the plaintiff alleges he was recruited for employment at the Hospital, I have first hand knowledge of the fact that ROYSPEC did not have any involvement in the recruiting or employment of Scott Nelson.

5. I also have knowledge that the initials "ROSPEC SJ" are used by the Hospital as the answer back code for the Hospital's telex machine. This code confirms that the caller has reached the correct number. The telex answer back code used by ROYSPEC is "ROYSPEC BAL".

6. ROYSPEC also has not had any agency or contractual relationship of any kind with Hospital Corporation of America at any time.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 28th day of April, 1989 in Washington, D.C.

/s/ Hameed Manejwala
HAMEED MANEJWALA
4/28/89

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title Omitted in Printing)

AFFIDAVIT OF SCOTT NELSON

STATE OF NORTH CAROLINA)
) ss
COUNTY OF WAKE)

COMES NOW Scott Nelson who being first duly sworn, deposes and says:

1. I am a Plaintiff in the above styled cause.

2. On December 6, 1983 I attended a pre-employment orientation held in Nashville, Tennessee wherein I, along with other attendees was told that in case of an emergency, family members residing in the United States should contact Royspec. The telephone number and location of Royspec was provided for use by family members in case of emergency.

3. At said orientation we were also informed by representatives of HCA that in case of an emergency Royspec would rapidly initiate the necessary communications with King Faisal Specialist Hospital in Riyadh, Saudi Arabia.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Scott Nelson
SCOTT NELSON

BEFORE ME, the undersigned authority, on the 20 day of May, 1989, personally appeared Scott Nelson who deposes and says that he has read the foregoing and it is true and correct to the best of his knowledge and belief.

/s/ [Illegible]
Notary Public

My commission expires: 9-6-89

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title Omitted in Printing)

RESPONSE TO DEFENDANT'S REQUEST FOR ADMISSIONS

The Plaintiff, SCOTT NELSON, by and through his undersigned attorney, responds to the Request For Admissions of Defendant Hospital Corporation of America as follows:

1. Admitted.

2 Denied that Exhibit A was presented at the time of the employment application. Admitted that Exhibit A was submitted at some time thereafter.

3. Exhibit A was not presented in support of the employment application.

4. Denied.

5. Denied.

6. Admitted that Scott Nelson represented that he had received a degree from M.I.T. Denied that it was in support of his employment application.

7. Denied that Exhibit A was presented to support the employment application. Admitted that Nelson incorrectly represented that he had received a degree from M.I.T.

8. Denied as to HCA. Plaintiff is unable at the present time to either admit or deny his employment status with Defendant HCA International, being that the appropriate response thereto is dependent upon the legal

relationship between Defendant HCA and Defendant HCA International. Plaintiff has made a reasonable inquiry, and the information known or readily obtainable is insufficient to either admit or deny.

THIS IS TO CERTIFY that a true and correct copy of the foregoing was mailed this 29th day of November, 1988 to: Kenny Nachwalter & Seymour, P.A., 400 Miami Center, 100 Chopin Plaza, Miami, Florida 33131-2305.

Respectfully submitted,

JORGE A. DUARTE, P.A.
2503 Southwest 27th Avenue
Miami, FL 33133
(305) 285-2040

/s/ Jorge A. Duarte, Esquire
JORGE A. DUARTE, ESQUIRE
Attorney for Plaintiffs

Dated: November 29, 1988
Miami, Florida

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title Omitted in Printing)

REQUESTS FOR ADMISSIONS

Defendant Hospital Corporation of America, pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, hereby requests Plaintiffs Scott and Vivian Nelson to admit the truth of the matters enumerated below, for purposes of the present action only, within the time prescribed by Rule 36(a).

Definition

A document has been attached to this discovery request as Exhibit A. As used below, the term "Exhibit A" shall be defined to mean the original document of which Exhibit A is a photocopy (or a photocopy of a photocopy, etc.), any photocopy of that original document, any photocopy of a photocopy of that original document, and so on.

Requests for Admissions

1. That Exhibit A is not a genuine diploma conferred on Scott Nelson by the Massachusetts Institute of Technology.

2. That Scott Nelson presented Exhibit A in support of his application for employment as a Monitoring Systems Engineer at the King Faisal Hospital and Research Centre, either at the time of his application for that employment or at some time thereafter when he was asked for verification of his educational credentials.

3. That Scott Nelson knew that Exhibit A was a forgery at the time he presented it in support of his application for employment at the King Faisal Hospital and Research Centre.

4. That Exhibit A was forged at the direction of Scott Nelson.

5. That Exhibit A was forged by Scott Nelson.

6. That Scott Nelson falsely represented that he had received a degree from the Massachusetts Institute of Technology in support of his application for employment as a Monitoring Systems Engineer at the King Faisal Hospital and Research Centre.

7. That Scott Nelson presented a document in support of his application for employment at the King Faisal Hospital and Research Centre which purported to be either the original or a copy of a diploma given to him by the Massachusetts Institute of Technology and that to Scott Nelson's knowledge that document had been forged or falsified.

8. That Scott Nelson has never been employed by Defendant Hospital Corporation of America or by Defendant HCA International Company.

KENNY NACHWALTER &
SEYMOUR, P.A.
400 Miami Center
100 Chopin Plaza
Miami, Florida 33131-2305
Telephone: (305) 358-8151

Dated:
Nov. 2, 1988
Miami, Florida

By: /s/ Scott E. Perwin
JAMES J. KENNY
SCOTT E. PERWIN

Attorneys for Defendants
Hospital Corporation of
America and HCA
International Company

(Certificate of Service Omitted in Printing)

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Massachusetts Institute of Technology

Upon the recommendation of the Faculty and
by authority vested in them the trustees have conferred on

Scott J. Nelson

the degree of

Bachelor of Science in Electrical Engineering

together with all the rights, privileges and honors thereunto appertaining
In Witness Whereof the seal of the Institute and the signatures
of the authorized officers are hereby affixed.

This Twentieth Day of May,
One Thousand Nine Hundred and Seventy Four

State of Florida
County of Broward
Date Aug 3, 1983
I certify this to be a true and exact
copy of the original document.
Shirley L Davis
Notary State of Florida

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES JULY 28 1985
BONDED THRU GENERAL INSURANCE UND.

Dean

President

KING FAISAL SPECIALIST HOSPITAL
AND RESEARCH CENTRE
RIYADH 11211
KINGDOM OF SAUDI ARABIA

مستشفى الملك فيصل التخصصي
ومركز الابحاث الطبية
الرياض - ١١٢١١
المملكة العربية السعودية

This agreement is made and entered into on the 24th day of SAFAR 1424 by and between:

First: King Faisal Specialist Hospital and Research Centre (hereinafter referred to as the "Hospital"), and,

Second: Scott Jeffrey Nelson (hereinafter referred to as "Employee").

It records the mutual understanding and the agreement of the two parties regarding the employment of the Employee by the Hospital under the following conditions:

حررت هذه الاتفاقية يوم _____ من شهر _____ بين كل من :-

أولا: مستشفى الملك فيصل التخصصي ومركز الأبحاث الطبية (المشار اليه فيما بعد بكلمة "المستشفى") و :

ثانيا: _____
(المشار اليه /اليها فيما بعد بكلمة "الموظف")

وقد اتفق الطرفان على أن يعمل الطرف الثاني موظفا بالمستشفى طبقا للشروط التالية :

1. NATURE OF WORK: The Employee shall work as Monitoring Systems Engineer and shall carry out other related duties as required by the Hospital.

١) طبيعة العمل : يعمل الموظف بوظيفة _____ وكل مايكلف به من أعمال متصلة بها.

2. SALARY: The Hospital shall pay to the Employee a monthly basic salary of SR 13,085. Such salary should be payable at the end of each Hejri month, in conjunction with other compensations and benefits set forth in Attachments "A" and "B".

٢) الراتب : يدفع المستشفى للموظف راتبا أساسيا في _____ قدره _____ ريالا سعوديا في نهاية كل شهر هجري وكذلك تعويضات ومميزات أخرى مذكورة في الملحقين "أ" و "ب".

3. POINT OF ORIGIN: The Employee's point of origin is designated as Ft. Lauderdale, FL USA. Riyadh will be considered the point of origin for all non-expatriate employees.

٣) نقطة المنشأ : تكون نقطة منشأ الموظف _____ وتعتبر مدينة الرياض نقطة المنشأ لجميع الموظفين المتعاقدين محليا.

4. DURATION OF CONTRACT: This contract shall be effective on 3 Rabi Al-Thani (7 DEC 83).

For an expatriate employee, the contract will be effective for a period of 24 months, unless employment is terminated earlier as provided herein.

٤) مدة العقد: يسري مفعول هذا العقد ابتداء من _____

ويكون نافذ المفعول لمدة ___ شهرا بالنسبة للموظفين المتعاقدين من خارج المملكة الا اذا تم انهاء خدمة الموظف قبل ذلك طبقا لما هو موضح فيما بعد.

8/12/83

The contract is renewed for subsequent periods based on mutual agreement of the Hospital and the Employee. Each renewal will be automatic and for a period of 12 months, unless the employee notifies the Hospital that the employee's intention is not to renew the contract, or if the Hospital notifies the Employee that the contract will not be renewed. Such notification will be in accordance with established Hospital policy. However, upon mutual agreement of the Hospital and the Employee, the employee's contract renewal period may be extended to either 24 or 36 months.

For a non-expatriate employee, the period of the contract will be unlimited, and may be terminated according to provisions set forth herein.

For a temporary or locum tenens employee, the contract will be effective for a period as set forth in Attachment "A" to this agreement.

It is further understood that the Employee will be on probation during the first ninety (90) days of his period of service.

5. WORK SCHEDULE: The regular work schedule for a full time employee will average 44 hours per week. The actual work days will be scheduled based on department operating requirements.

The regular work schedule for a part-time employee will not exceed 24 hours per week.

The Hospital may, at its discretion make revisions to the work schedule according to operational requirements.

6. TRANSPORTATION: The Hospital shall provide air transportation to the employee in the following instances:

a) From the employee's point of origin to the Hospital at the commencement of the contract, unless the employee is resident in the Kingdom of Saudi Arabia at the time of signing the contract.

ويحدد العقد لفترات لاحقة على أساس اتفاق متبادل بين المستشفى والموظف ويكون كل تجديد تلقائيا ولمدة اثني عشر شهرا الا اذا أبلغ الموظف أنه لا ينوي تجديد العقد ، أو اذا أخطر المستشفى الموظف بأن عقده لن يجدد . ويتم هذا الاخطار طبقا لسياسة المستشفى القائمة . غير أنه بناء على اتفاق متبادل بين المستشفى والموظف يمكن أن تمدد فترة تجديد العقد لتصبح أما أربعة وعشرين أو ستة وثلاثين شهرا .

أما بالنسبة للموظفين المتعاقدين محليا فان مدة عقودهم غير محددة ويمكن انهاؤها طبقا للنصوص المبينة فيما بعد .

أما بالنسبة للموظفين المؤقتين أو الذين يعينون لمدة محدودة بدلا من آخرين فان عقودهم سوف تكون كما هو مبين في الملحق "أ" من هذا العقد .

ومن المفهوم أيضا أن الموظف سيكون تحت التجربة خلال مدة التسعين يوما الأولى من مدة خدمته .

٥) أوقات العمل : يبلغ متوسط أوقات العمل العادية بالنسبة للموظفين الذين يعملون كل الوقت ٤٤ ساعة في الأسبوع . ويتم تنظيم أيام العمل المعينة على أساس متطلبات العمل في كل ادارة .

أما بالنسبة للموظفين الذين يعملون بعض الوقت فان أوقات العمل العادية لا تزيد على ٢٤ ساعة في الأسبوع .

على أن للمستشفى - وطبقا لما يراه - أن يعدل أوقات العمل طبقا لما تتطلبه احتياجات سير العمل .

٦) المواصلات : يؤمن المستشفى سفر الموظف بالطائرة في الحالات التالية :

أ) من نقطة منشأ الموظف الى المستشفى عند بداية مدة العقد مالم يكن مقيما بالمملكة عند توقيع العقد .

b) From the Kingdom to the employee's point of origin and return upon annual leave.

ب) من المملكة الى نقطة منشأ الموظف وايابا عند الاجازة السنوية.

c) From the Kingdom to the employee's point of origin upon final termination of services.

ج) من المملكة الى نقطة منشأ الموظف عند نهاية خدمته.

Transportation will be provided according to Hospital policy for eligible dependents as reflected in Attachments "A" and "B".

ويؤمن المستشفى السفر بالطائرة لمرافقي الموظف المعتمدين كما هو موضح في الملحقين "أ" و "ب".

7. HOUSING ALLOWANCE: The Hospital, at its option, and due to operational requirements, shall provide housing accommodations to the Employee. In this case, the monthly Basic Housing Allowance shown in Attachment "A" to this Agreement shall be deducted from total compensation as rental payment. However, the Employee may be permitted to lease non-Hospital accommodations. In this case, the Employee shall be paid a Special Housing Allowance in accordance with Hospital policy.

٧) بدل السكن: يقوم المستشفى، حسبما يتراءى له وحسب متطلبات العمل، بتوفير السكن للموظف. وفي هذه الحالة فان بدل السكن الشهري الأساسي المبين في الملحق "أ" من هذا العقد يتم حسمه من مجموع مستحقاته نظير الايجار. ويجوز السماح للموظف أن يستأجر مسكنا لايملكه المستشفى. وفي هذه الحالة يدفع المستشفى للموظف بدل سكن خاص وفقا لسياسة المستشفى.

8. LEVIES AND TAXES: The Employee shall be subject to levies and taxes imposed by the Saudi Arabian Government on his income. Such levies and taxes will be deducted from the Employee's salary and benefits in accordance with provisions of applicable regulations.

٨) الرسوم والضرائب: يخضع الموظف للرسوم والضرائب التي تفرضها الحكومة السعودية على دخله. وسوف يقوم المستشفى بخصمها من مرتبه وعوائده طبقا لنصوص اللوائح والنظم السارية.

The Hospital shall pay the dues and taxes imposed on expatriate employees in connection with Hospital sponsored travel, as well as those relating to the Employee's work permit and residency in the Kingdom of Saudi Arabia.

وسوف يدفع المستشفى الرسوم والضرائب المفروضة على الموظفين المتعاقدين من الخارج فيما يتعلق بالسفر الذي يكفله المستشفى وكذلك فيما يتعلق بتصاريح عمل الموظف واقامته في المملكة العربية السعودية.

9. MEDICAL REQUIREMENTS: The Employee and all medically eligible dependents shall be obliged to meet all medical standards set forth by the Hospital, including a medical questionnaire, physical examination, inoculations and other specialized medical requirements that may be established from time to time by the Hospital.

٩) المتطلبات الطبية: يخضع الموظف وجميع مرافقيه الذين يحق لهم تلقي الرعاية الطبية لتنفيذ كل ما يقرره المستشفى بشأن العناية الطبية.

10. WORK-RELATED DISABILITY: In the event of death, an injury or disease sustained by the Employee during or due to work, the Hospital will pay compensation according to Hospital policy.

11. NON WORK-RELATED DISABILITY: In the event that the employee is unable to work due to non work-related disability, the employee is eligible to receive sick leave up to thirty (30) days as full pay and sixty (60) days at three-quarters pay during any one service year.

12. MATERNITY LEAVE: A female employee may be granted maternity leave up to forty-five (45) days during a service year, according to Hospital policy.

Temporary, Locum Tenens, and part-time employees will not be entitled to maternity leave.

13. ANNUAL LEAVE: The employee shall be entitled to annual paid leave at the rate of thirty calendar days per year of service. The employee shall be eligible for such leave after completion of the first twelve months of service.

Annual leave or pay in lieu thereof shall be scheduled according to work requirements and Hospital policy.

14. DISCIPLINARY PROCEDURES: In the event that the employee commits an infraction of the rules, regulations and policies of the Hospital, the employee will be subject to disciplinary procedures, according to the seriousness of the infraction. Such disciplinary procedures are:

a) Warning

b) Suspension without pay

c) Termination of employment

بما فيها الاجابة على كل الاستفسارات الطبية وعمل الفحوص الطبية والتطعيم ضد الأمراض المختلفة واجراء كافة الفحوص الطبية التخصصية التي قد يجريها المستشفى من وقت لآخر .

١٠) العجز بسبب اصابة العمل : اذا توفى الموظف أو أصيب باصابة أو مرض أثناء العمل أو بسببه فان المستشفى يدفع له تعويضا طبقا لنظام المستشفى.

١١) العجز بسبب اصابة لاتتعلق بالعمل : في حال عدم تمكن الموظف من العمل نتيجة عجز لاعلاقة له بالعمل يمنح الموظف اجازة مرضية تصل الى ثلاثين (٣٠) يوما براتب كامل، وستين (٦٠) يوما أخرى بثلاثة أرباع الأجر وذلك خلال كل سنة من سنوات الخدمة .

١٢) اجازة الوضع : تمنح الموظفة اجازة وضع تصل الى خمسة واربعين (٤٥) يوما خلال أي سنة من سنوات الخدمة ، طبقا لنظام المستشفى .

أما الموظفات المؤقتات أو المراسلات أو العاملات بدوام جزئي فلا يحق لهن اجازة وضع .

١٣) الاجازة السنوية : يستحق الموظف اجازة سنوية مدتها ثلاثون يوما براتب كامل عن كل سنة خدمة . ويعتبر الموظف مستحقا لهذه الاجازة بعد اتمام الاثني عشر شهرا الأولى من الخدمة .

ويتم ترتيب الاجازة السنوية أو التعويض عنها طبقا لمتطلبات العمل ولسياسة المستشفى .

١٤) الاجراءات التأديبية : اذا ارتكب الموظف ما يخل بالنظم واللوائح والسياسة المتبعة في المستشفى فانه يتعرض لاجراءات تأديبية تبعا لخطورة المخالفة التي ارتكبها . وهذه الاجراءات التأديبية هي :-

أ) الانذار

15. TERMINATION OF EMPLOYMENT: Employee's service under this agreement may be terminated in any of the following ways:

a) Probationary Termination

The Hospital shall have the right within the probationary period to terminate Employee's service. In such cases, the agreement will be terminated without prior notice or severance benefit.

b) Dismissal

The Hospital may terminate the Employee's services hereunder at any time based on poor job performance or infraction(s) of the rules, regulations and policies of the Hospital, by giving him written notice at least thirty (30) days prior to the effective date of such termination. The Hospital may at its option, pay to the Employee an amount equivalent to thirty (30) days of salary in lieu of such notice.

c) Discharge for Cause

The Hospital may cancel this agreement without prior notice if it is established that the Employee has committed any of the infractions set forth in Hospital rules, regulations and policies as warranting immediate termination. Such infractions include, but are not limited to, possession of arms, explosives, narcotics or liquor, theft, intentional or malicious destruction of Hospital property, resorting to forgery to obtain employment, absent without valid reason for more than twenty (20) days in any service year, or more than ten (10) consecutive days, assaulting a supervisor or committing an immoral act.

d) Resignation

The Employee may at any time terminate this agreement by submitting a written resignation to the Hospital. An

ب) الاعفاء من العمل بدون اجر .

ج) انهاء الخدمة .

١٥) انهاء الخدمة: قد يتم انهاء خدمة الموظف وفقا لهذا العقد بأحد الأشكال الآتية :

أ) انهاء الخدمة أثناء فترة الاختبار:

للمستشفى الحق خلال فترة الاختبار في انهاء خدمة الموظف . وفي مثل هذه الحالات ، يتم انهاء الاتفاق بدون اخطار مسبق أو صرف فوائد نهاية الخدمة .

ب) الفصل من الخدمة :

يمكن للمستشفى انهاء خدمة الموظف في أي وقت بسبب ضعف أدائه لعمله أو ارتكابه لمخالفة أو مخالفات لنظم ولوائح وسياسة المستشفى، وذلك بتوجيه اخطار كتابي له قبل ثلاثين (٣٠) يوما على الأقل من تاريخ نفاذ انهاء الخدمة . وللمستشفى وفقا لما يراه ، أن يدفع للموظف مبلغا يعادل ثلاثين (٣٠) يوما من راتبه بدلا من ذلك الاخطار.

ج) الفصل لسبب :

يحق للمستشفى الغاء هذا العقد بدون اخطار مسبق اذا ما ثبت أن الموظف قد قام بارتكاب أية مخالفات واردة في لوائح ونظم وسياسة المستشفى مما يستلزم الانهاء الفوري للخدمة . وتشمل تلك المخالفات على سبيل المثال وليس على سبيل الحصر حيازة الأسلحة والمتفجرات والمخدرات والمشروبات الروحية والسرقة والتخريب المتعمد الذي يضر بممتلكات المستشفى واللجوء الى التزوير للحصول على الوظيفة، والتغيب بدون عذر مقبول لمدة تزيد على عشرين (٢٠) يوما في خلال أي سنة من سنوات الخدمة . أو لأكثر من عشرة (١٠) أيام متتالية . أو الاعتداء أو التهجم على رئيسه المباشر أو ارتكاب عمل فاضح أو مخل بالآداب العامة .

د) الاستقالة :

يمكن للموظف أن يقوم في أي وقت بانهاء هذا العقد بتقديم استقالة مكتوبة الى المستشفى.

expatriate will be required to give written notice at least sixty (60) days prior to the effective date of such termination.

Non-expatriate employees will be required to give written notice at least thirty (30) days prior to the effective date of such termination.

The Hospital may, at its discretion, exempt the employee from all or a portion of the above requirements concerning notice.

The employee will be eligible to receive termination benefits in accordance with applicable rules, regulations and policies of the Hospital.

e) Reduction in Force

The Hospital may at any time terminate the Employee's services hereunder, when, in the sole judgement of the Hospital, the employee's position is no longer required. In such instances, the Hospital shall give a minimum of sixty (60) days notice of such termination.

The Hospital may at its option, pay to the employee an amount equivalent to sixty (60) days total compensation in lieu of such notice.

f) Medical Discharge

In the event of the employee's death, his total incapacitation for performing assigned work, or illness resulting in absence from work for a period of ninety (90) consecutive days or a total of one hundred and twenty (120) days during any one service year, employee's services hereunder shall automatically come to an end.

16. SEVERANCE BENEFIT: Upon final termination of this agreement, the employee shall be entitled to severance benefit in accordance with provisions of Hospital rules, regulations and policy.

ويتحتم على الموظف المتعاقد بعقد خارجي تقديم اخطار كتابي قبل ستين (٦٠) يوما من تاريخ نفاذ الاستقالة.

وعلى الموظف المتعاقد بعقد داخلي تقديم اخطار كتابي قبل ثلاثين (٣٠) يوما من تاريخ نفاذ الاستقالة.

ويمكن للمستشفى وفقا لما يراه اعفاء الموظف من جميع أو بعض المتطلبات السابقة الخاصة بالاخطار.

ويستحق الموظف الحصول على مكافآت نهاية الخدمة بما يتفق مع القواعد واللوائح والسياسة المطبقة بالمستشفى.

هـ) تخفيض القوة العاملة:

قد يقوم المستشفى بالاستغناء عن خدمات الموظف في أي وقت بموجب هذا العقد عندما يتضح أنه - وفقا للقرار الذي يقوم المستشفى منفردا باتخاذه - لم تعد هناك حاجة للوظيفة التي يشغلها هذا الموظف وفي مثل هذه الحالات سيقوم المستشفى بتوجيه اخطار للموظف مدته ستين(٦٠) يوما قبل انهاء خدمته.

ويمكن للمستشفى، وفقا لما يتراءى له، أن يدفع للموظف مبلغا يعادل ستين(٦٠) يوما كمكافأة شاملة بدلا من ذلك الاخطار.

و) العمل لأسباب طبية:

في حالة وفاة الموظف أو عجزه التام عن القيام بأداء العمل المكلف به أو اصابته بمرض ينتج عنه التغيب عن العمل لمدة تسعين (٩٠) يوما متصلة أو ما يصل مجموعه الى مائة وعشرين (١٢٠) يوما خلال أي سنة من سنوات الخدمة، فانه سيتم اعتبار خدمات الموظف المذكور منتهية تلقائيا.

ز) مكافأة نهاية الخدمة: عند انهاء هذا العقد بصفة نهائية، يحق للموظف الحصول على مكافأة نهاية الخدمة طبقا للأحكام التي تنص عليها لوائح ونظم وسياسة المستشفى.

17. COMPLETION OF SERVICE YEAR BONUS: Upon completion of the second and each subsequent service year, an expatriate employee shall be eligible to receive a completion of service year bonus, equivalent to one month's basic salary in effect at the completion of that service year. Such bonus shall be exclusive of the first year of Hospital service.

In certain cases of terminations prior to the completion of the contract, a pro-rata portion of the completion of service bonus will be paid according to the rules, regulations and policies of the Hospital.

١٧) منحة اتمام سنوات الخدمة :

عند اتمام السنة الثانية من الخدمة وفي نهاية كل سنة من سنوات الخدمة التالية يستحق الموظف المتعاقد من الخارج الحصول على منحة اتمام سنة الخدمة بما يعادل شهرا واحدا من راتبه الأساسي الجاري عند تمام تلك السنة ، وذلك باستثناء سنة الخدمة الأولى بالمستشفى .

وفي بعض حالات انتهاء الخدمة قبل اتمام مدة العقد سيتم دفع نسبة تتمشى مع معدل ما قضاه من فترة الخدمة كمنحة وذلك وفقا لنظم ولوائح وسياسة المستشفى .

18. LOCUM TENENS, TEMPORARY AND PART-TIME EMPLOYEES: The benefits and compensation afforded to Locum Tenens, Temporary and Part-Time employees are limited to these set forth in Attachment "A" or "B" pertaining to salary, monetary allowances, work related disabilities, sick leave and medical care. No other benefits or privileges set forth elsewhere in this contract are applicable to these employees. Regarding this type of employee, the Hospital shall have the right to terminate the Employee without prior notice or severance pay.

١٨) الموظفون "المنتدبون" لفترة محددة والموظفون المؤقتون والعاملون لبعض الوقت : تنحصر الفوائد والمستحقات التي يحصل عليها المنتدبون لفترة محددة والموظفون المؤقتون والموظفون الذين يعملون بعض الوقته على ما هو مبين في ملحقي "أ" أو "ب" فيما يتعلق بالرواتب والبدلات النقدية والعجز الناتج عن اصابات العمل والاجازات المرضية والرعاية الطبية . وفيما عدا ذلك فلا تنطبق أية فوائد أو امتيازات مما تكون قد وردت في مكان آخر من هذا العقد على أولئك الموظفين . وفيما يتعلق بهذا النوع من الموظفين فان للمستشفى الحق في انهاء خدمة الموظف بدون اخطار مسبق أو صرف أية فوائد خدمة .

19. PASSPORTS: The Employee will, for the duration of the Employee's stay in the Kingdom, present the Employee's (and resident dependents, if applicable) passport to the Hospital for safekeeping for processing and reneval of residence and work permits, for visa processing and security requirements.

This does not in any way restrict the Employee's ability to obtain the passport whenever it is deemed necessary.

١٩) الجوازات: على الموظف طوال مدة اقامته بالمملكة تسليم جواز السفر الخاص به (وكذلك جوازات سفر مرافقيه المعتمدين والمقيمين) الى المستشفى لحفظه وللقيام باجراءات تجديد الاقامة وتصاريح العمل والحصول على التأشيرات وكذلك لدواعي الأمن .

وهذا لايمنع الموظف باي حال من الأحوال من الحصول على جواز سفره كلما دعت الضرورة الى ذلك .

20. APPLICABLE CALENDAR: All times and dates set forth herein shall refer to the Hejri Calendar.

٢٠) التقويم الذي يتم تطبيقه : يجري حساب جميع المواعيد والتواريخ الواردة هنا على أساس التقويم الهجري .

21. MARRIED STATUS: An Employee granted married status will lose the benefits offered by such status if the Employee's spouse fails to meet the residency requirements during the Employee's service year.

٢١) الموظف بعقد متزوج: يفقد الموظف بعقد متزوج المزايا التي توفرها له هذا العقد اذا لم تستمر اقامة زوجه معه وفقا لشروط تلك الاقامة أثناء أي سنة من سنوات الخدمة.

22. APPLICABLE REGULATIONS: This contract is subject to the conditions, rules, regulations and policies of the Hospital. The provisions and benefits set forth in Attachments "A" and "B" to this agreement are considered as part of the contract. The application form, duly signed by the Employee and the Hospital will constitute an agreement to accept the changes as specified therein.

٢٢) النظم واللوائح المطبقة: يخضع هذا العقد لجميع الشروط واللوائح والنظم والسياسة التي تتبعها المستشفى. وبعد ما ورد في الملحقين "أ" و "ب" بخصوص الشروط والمستحقات جزءا لايتجزأ من العقد، وسيعتبر نموذج طلب الاستخدام الذي قام كل من الموظف والمستشفى بالتوقيع عليه، اتفاقا على قبول التغييرات التي يتم تحديدها في هذا السياق.

23. CONTRACT DISPUTES: In the case of any dispute arising from this contract, the Saudi courts, authorities or commissions only will have jurisdiction.

٢٣) الإختصاص بنظر المنازعات: تختص المحاكم والسلطات واللجان السعودية دون غيرها بنظر أي نزاع قد ينشأ من هذا العقد.

This Agreement in Arabic and English has been executed in two (2) copies, the parties hereto both retaining a copy and intending both copies to serve as duplicate originals of this agreement.

وقد تم تحرير هذا العقد الصادر باللغتين العربية والانجليزية من نسختين (٢) تسلم كل من الطرفين المعنيين بنسخة وتعتبر كلاهما نسختين أصليتين من هذا العقد.

King Faisal Specialist Hospital and Research Centre	Date	التاريخ	مستشفى الملك فيصل التخصصي ومركز الأبحاث الطبية
11/21/93		11/30/93	

Employee — الموظف

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 88-1791-CIV-NESBITT

SCOTT NELSON and VIVIAN NELSON,
individually and as husband and wife,
Plaintiffs,

v.

SAUDI ARABIA, KING FAISAL SPECIALIST HOSPITAL,
A Saudi hospital in Riyadh, Saudi Arabia, and ROYSPECT,
Defendants

Case No. 88-0484-CIV-NESBITT

SCOTT NELSON and VIVIAN NELSON,
individually and as husband and wife,
Plaintiffs

v.

HOSPITAL CORPORATION OF AMERICA;
and HCA INTERNATIONAL COMPANY,
Defendants

DECLARATION OF FREDERICK G. DUTTON

I, Frederick G. Dutton, declare as follows:

1. I am an attorney in the firm of Dutton & Dutton, PC, 1140 Connecticut Avenue, N.W., Suite 801, Washington D.C. 20036, and am admitted to the Bar in California and the District of Columbia. I am now a resident of Washington D.C. The information set forth herein is based on my personal and first hand knowledge except as otherwise stated. I am competent to testify concerning the matters set forth herein.

2. For over ten years, I have acted as attorney for the Royal Embassy of the Kingdom of Saudi Arabia in the United States. I have been requested by the Embassy to advise and safeguard its interest and the interest of the Kingdom of Saudi Arabia as to the above-referenced action.

3. For over two years, the Embassy has been involved off and on in discussions with Scott Nelson concerning claims of alleged mistreatment in Saudi Arabia and has offerred to arrange for him to pursue those claims in the courts and/or administrative channels of Saudi Arabia. Mr. Nelson has been assured by the Embassy that he and/or his counsel, ast his option, would be issued visas and guaranteed safe passage to seek redress through the Saudi administrative and/or legal system. Mr. Nelson has never accepted that offer nor acted on it with the Embassy. I have been authorized to represent that the Kingdom continues to be ready to work with the U.S. Embassy as well as the plaintiffs and their counsel to effectuate this offer on an impartial and entirely secure, safe basis.

4. I am also aware that the issues raised by Nelson's complaint have been the subject of continuing discussions among diplomatic officials of the United States and the Kingdom of Saudi Arabia. I have also been requested to state that the Kingdom believes that adjudication of the plaintiffs' claims in the courts of the United States would pose an interference with this diplomatic process as well as adjudication of the matter in the legal system of Saudi Arabia, which is the proper and available forum for considering the facts and merits involved in the Nelson claims.

Executed this 23rd day of June, 1989.

/s/ Frederick G. Dutton
FREDERICK G. DUTTON

PROBLEMS CONFRONTING AMERICAN BUSINESSMEN IN SAUDI ARABIA

HEARING

BEFORE THE

SUBCOMMITTEE ON

EUROPE AND THE MIDDLE EAST

OF THE

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

June 15, 1987

Printed for the use of the Committee on Foreign Affairs

STATEMENT OF SCOTT NELSON, DAVIE, FL, FORMER EMPLOYEE OF HOSPITAL CORPORATION OF AMERICA

Mr. NELSON. I would like to thank the Chairman and the committee for this opportunity to shed some light on the treatment of Americans in Saudi Arabia. In September '83 I was employed by Bechtel Petroleum Company as a senior electrical engineer. I saw an ad in a periodical for Hospital Corporation of America looking for a monitoring systems engineer in Saudi Arabia, King Faisal Specialist Hospital and Research Center. I applied for the job and received it.

My problems began when, as part of my job requirements, I discovered a dangerous grease valve in the oxygen and nitrous oxide lines at the King Faisal Hospital. These were not only a fire hazard, but were endangering patients' lives in that all lines that connected to these valves were contaminated, thus endangering the patients' lives.

During the period of March through August of 1984 I reported this discovery to every level of the King Faisal Specialist Hospital (KFSH), including the Royal Commission, which was already investigating wrongdoings at KFSH. Each department level, rather than taking any kind of action, tried to cover up and ignore this dangerous situation. I was instructed to ignore the problem.

After having reported my discoveries, the harassment became so malicious and relentless that in June of 1984 I tried to resign. During this period I contacted a Ms. Stephanie Smith and Mr. Jim Bigges, U.S. Embassy Agents. I told them about my situation and that KFSH was refusing me, my wife and son our passports so we could leave the Kingdom. I also called the State Department in D.C. and spoke to a Ms. Hobgood. She told me that all she could do was file a report on the problem. In September I again tried to submit my resignation to

Security, Management, and the Royal Commission, but the hospital refused acceptance of my resignation, and refused again to return my passport.

On September 27, 1984, I was summoned to Security by Mr. Kareem. I was met there by two investigators who wanted to interview me for a few minutes. Neither investigator spoke English. I was then taken to the Criminal Investigation Division, CID. There, in a small cell, a man put me in foot shackles and pushed me to the floor. Four men then entered the cell; one man slapped me in the face, breaking my glasses. Another then punched me in the back of the neck and lower back. Two of the men held my feet while another pulled my shoes off and beat my feet with bamboo canes approximately ¼ inch in diameter. The beatings had commenced.

I was punched, kicked and slapped on the back, chest, legs and face repeatedly for about thirty or thirty-five minutes. Afterwards, water was thrown on my face and the beatings resumed for approximately fifteen-twenty more minutes. I was then released from the shackles. All the while no one spoke any English to me at all. Four days passed and I had not been fed since my arrest. On October 1, 1984, I was taken to an office of the Head of the Prison. There I was met by Mr. Omar, a translater from the hospital. The first thing he said to me was sign anything they ask or I will continue to be beaten until I sign any statement they asked me for.

I then signed a statement totally in Arabic that was never interpreted to me. I was then returned to my cell.

After 15 to 20 minutes later, the U.S. Embassy agents Martin Quinn, Jim Bigges and Mr. Mazan, talked with me. They had been ordered not to speak with me about my arrest, only about my family. They told me that I should be released in one week at the most. I was given the statement to sign by Lt. Abdullah Aziz. He said that I did nothing wrong in Saudi Arabia and should be released within a week.

I told the Embassy about my beatings. They told me that if a report was filed by them it could make matters worse for me.

On October 3, 1984, I was transported to Al Sijan Prison to await trial on unknown charges. On october 4, 1984 (one week after my arrest), I was visited by the Embassy. They told me that they could not do anything for me, but that they expected my release in "one to two weeks." I never saw any Embassy personnel again. I was put in a prison cell area large enough for approximately fifty men. There were 110 prisoners in the cell area. I slept on the floor in the bathroom where we had to sleep in shifts because there was not enough floor space and because one shift had to depend on the other to keep the rats off.

The mail was pilfered by the guards and destroyed before it got to the inmates. The meals were always the same and consisted of rice with chicken, arabic vegetables, bread and tea. They never varied. The food was served on one large tray which was placed in the prison area. Inmates grabbed for the food with their hands, directly from the one tray.

On November 5, 1984 (39 days after my arrest), I was released from the Al Sijan Prison. Captain Mohammed of the prison told me that I was being released due to a telephone conversation between Senator Kennedy and King Fahd and the efforts of Congressman Larry Smith. The King ordered my immediate release. At 10 p.m. that evening I was returned to my family.

During the period of my incarceration my wife was sexually harassed by assistants to Prince Sultan. She was told that if she would go away for weekends with this particular individual Mr. Aljabar, that I would be released immediately.

She didn't and I remained in jail.

For the next two weeks I was brought around to various government offices where they offered me more and more of my contract to stay in the Kingdom.

Finally after persistent refusals I was allowed to leave the Kingdom after I signed a statement that said that I was leaving under my own free will and that there were no hard feelings between me and Saudi Arabia.

Since my return from Saudi Arabia, I have undergone four operations on my knees that have totally been reconstructed and I am awaiting another two or three on my back.

I am totally disabled, have nowhere to turn but to my own savings to rectify any of these problems.

I am here today in hopes that Congress will see to it that no other Americans are treated in this way, not only in Saudi Arabia but anywhere in the world.

I think you for your time.

[The prepared statement of Mr. Nelson follows:]

PREPARED STATEMENT OF SCOTT NELSON, FORMER EMPLOYEE, HOSPITAL CORP. OF AMERICA

AFFIDAVIT

UPON BEING DULY SWORN, VIVIAN NELSON, STATES AS FOLLOWS:

1. My name is Vivian Elaine Nelson.

2. My husband is Scott Nelson.

3. We reside with our four year old son, Matthew, at 3661 W. Citrus Trace, Davie, Florida.

4. On September 27, 1984, my husband Scott was arrested and jailed in Riyadh, Saudi Arabia without charges or explanation.

5. Approximately two weeks after his arrest, I was approached by Mr. Aljaber, Assistant to Prince Sultan, the Minister of Defense and he made the suggestion to me that in return for a sexual favor he could see that Scott was released. I refused and Scott remained incarcerated.

FURTHER AFFIANT SAYETH NOT.

/s/ Vivian Elaine Nelson
VIVIAN ELAINE NELSON

Sworn and subscribed before me this 27 day of October, 1986, in Miami, Dade County, Florida, U.S.A.

/s/ [Illegible]
Notary Public

AFFIDAVIT OF SCOTT J. NELSON

STATE OF FLORIDA)
) ss:
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared SCOTT J. NELSON, who being duly sworn deposes and says:

1) My name is Scott J. Nelson. The following is a summary of the experience that I had as an American citizen employed in Saudi Arabia. It has affected my family and I emotionally as well as physically in ways that will never be forgotten. I will try to present the facts in as chronological and comprehensive a format as possible:

I was 29 years old in September of 1983, in perfect health, and employed as a Senior Electrical Engineer with Bechtel Construction in Louisville, Kentucky when I saw an ad for a Monitoring Systems Engineer at the King Faisal Specialist Hospital and Research Center in Saudi Arabia. (Exhibit 1 attached hereto.) I went to Saudi Arabia and interviewed for the job with a Mr. Don Laffew and his boss, Riaid Kayyali. I was offered the position and then returned to the United States to complete the processing requirements (visas, medical exam, etc.). After having signed the contract and completed the employment application and having provided them with all of the essential pre-employment information, I left on December 6, 1983 to go to Nashville for my orientation and airline tickets for my journey to Saudi Arabia. (Pre-Employment Physical Exam attached as Exhibit 2.)

My problem began when, as part of my job requirements, I discovered a dangerous grease valve in the oxygen and nitrous oxide lines at the King Faisal Hospital. These were not only a fire hazard, but were endangering patients lives in that all lines that connected to these

valves were contaminated. (See Exhibit #3, dated March 20, 1984, attached hereto.) During the period of March through August of 1984 I reported this discovery to every level of the King Faisal Specialist Hospital (K.F.S.H.), including the Royal Commission, which was already investigating wrong-doings at K.F.S.H. Each department level, rather than taking any kind of action, tried to cover up and ignore this dangerous situation. I was instructed to ignore the problem. After having reported my discoveries, the harrassment became so malicious and relentless that in June of 1984 I tried to resign. I was talked out of resigning by my boss, Don Leffew. During this period I contacted a Ms. Stephanie Smith and Mr. Jim Bigges, U.S. Embassy Agents. I told them about my situation and that K.F.S.H. was refusing to let me leave the Kingdom. I also called the State House in D.C. and spoke to a Ms. Hobgood. She told me that all she could do was file a report on the problem. In September I again tried to submit my resignation to Security, Management, and the Royal Commission, but the hospital refused acceptance of my resignation. (Exhibit #4, Letter of Resignation and Exhibit #5, Performance Evaluation attached hereto.)

On September 27, 1984 I was summoned to Security by Mr. Kareem. I was met there by two investigators who wanted to interview me for a few minutes. Neither investigator spoke English. I was then taken to the Criminal Investigation Division (C.I.D.). There, in a small cell, a man named Abdullah handcuffed me, put me in foot shackles and pushed me to the floor. Four men then entered the cell; one man slapped me in the face, breaking my glasses. Another then punched me in the back of the neck and lower back. Two of the men held my feet while another pulled my shoes off and beat my feet with a bamboo cane approximately ¼ inch in diameter. The beatings had commenced. I was punched, kicked and slapped on the back, chest, legs and face repeatedly for about thirty minutes. Afterwards, water

was thrown on my face and the beatings resumed for approximately another 15-20 minutes. I was then released from the shackles. All the while no one spoke any English to me. Four days passed and I had not been fed since my arrest. On October 1, 1984 I was taken to an office to give my statement. A Mr. Omar from K.F.S.H. was acting as my interpreter. The first thing Mr. Omar said to me was sign anything they ask or I will continue to be beaten until I signed. I then signed a statement in Arabic and returned to my cell. Around fifteen minutes later the U.S. Embassy Agents (Martin Quinn, Jim Bigges and Mr. Mazan) talked with me. They had been ordered not to speak with me about my arrest, only about my family. They told me that I should be released *in one week at the most.* I was given the statement to sign by Lt. Abdullah Aziz. He said that I did nothing wrong in Saudia Arabia and should be released. I told the Embassy about my beatings. They told me that if a report was filed by them it could make matters worse for me.

On October 3, 1984 I was transported to Al Sijan Prison to await trial on unknown charges. On October 4, 1984 (one week after my arrest), I was visited by the Embassy. They told me that they could not do anything for me, but that they expected my release in "one to two weeks." I never saw any Embassy personnel again. I was put in a prison cell area large enough for approximately fifty men. There were one hundred and ten prisoners in the cell area. I slept on the floor in the bathroom where all night long rats crawled all over me. The lights were kept on all night long, 24 hours a day. Mail was pilfered by the guards and destroyed before it got to the inmates. The meals were always the same and consisted of rice with chicken, arabic vegetables, bread and tea. They never varied. The food was served on one large tray which was placed in the prison area. Inmates grabbed for the food with their hands, directly from the one tray. I felt fortunate for the times that I got a handful of food. Once a week I was let outside for fresh air and exercise.

Each day at 1:00 p.m. the convicted prisoners due lashes were removed from the cell area and beaten so that all could watch.

On November 5, 1984 (39 days after my arrest), I was released from the Al Sijan Prison. Captain Mohammed of the prison told me that I was being released due to a telephone conversation between Senator Kennedy and King Fahad who had ordered my immediate release. At 10:00 p.m. I returned home to my family. (Composite Exhibit #6, Letters Regarding Release, attached hereto.) From the time of my arrest to my release I was never charged officially with a crime that I was aware of. I had signed a document in Arabic, but was unaware, and am still unaware, of the contents of the document.

On November 6, 1984 Mr. Alessa from the Royal Commission came to my home to ask me to return to work. I declined the offer. He told me that I could seek employment anywhere in the Kingdom or take a few days to rest and reconsider employment at K.F.S.H. He was very insistent that I did not leave Saudi Arabia with "ill feelings." He offered me an exit/re-entry visa to return to his Kingdom to work. When I asked for my passport he told me that the hospital would regain my passport from the Governor's office. He said that I could leave "immediately." He requested that I write a statement that I could leave Saudi Arabia whenever I wanted and was not being held against my will. I wrote this statement as requested.

November 7, 1984 came, and no passports, visas or tickets were obtained for me and my family. On November 8, 1984 the Embassy went with me to find our passports. We went first to the Royal Commission Jail, but the passports were not there. We drove next to the Deputy Governor's Office and found the passports. I gave the passports to the hospital to obtain airline tickets and exit visas to leave the Kingdom. At both the Royal Commission Jail and the Deputy Governor's Office I was questioned as to why I wished to leave Saudi Arabia and why I would not return to work at K.F.S.H. From November

8 until November 11, the hospital refused to obtain my exit visas and airline tickets. Finally, on November 12, 1984, passports and tickets were given to me and my family to leave Saudi Arabia. I had to resort to seeing the Deputy Governor to get a letter to process my exit visas and obtain the tickets to finally leave the Kingdom.

I returned to the United States and flew to Florida to seek medical help. I contacted Dr. Richard K. Lohmann, an orthopedic surgeon. On November 16, 1984 I began an intensive physical therapy program for my knees and back. I underwent surgery to the left knee on November 27, 1984 (Exhibit #7, hosital records, attached hereto.), and have required physical therapy ever since.

I began treating with a different orthopedic surgeon, Martin M. May, M.D. I required an additional surgery to the right knee, which was performed by Dr. May on September 18, 1986 (Exhibit #8, Dr. May's report, attached hereto). I have been undergoing continual physical therapy for my back and knees, as a result of the beatings I received in Saudi Arabia, and expect that I will need additional surgery for my back. I do not have health insurance and have been forced to pay the medical bills from my own pocket. When I left for Saudi Arabia I was in perfect health, I had a substantial savings account and was capable of supporting my family. I left Saudi Arabia physically beaten and psychologically broken. I have depleted my savings as a result of my medical expenses and am in debt and unable to work.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Scott J. Nelson
SCOTT J. NELSON

SWORN TO AND SUBSCRIBED before me this 18 day of November, 1986.

/s/ David H. Form
Notary Public,
State of Florida
At Large

SAUDI CHARGES AGAINST SCOTT NELSON

I would like to begin my questioning with Mr. Scott Nelson.

Mr. Nelson, in your prepared statement, you say, "My problems began when, as part of my job requirements, I discovered a dangerous grease valve in the oxygen and nitrous oxygen lines in King Faisal Hospital. These were not only a fire hazard but were endangering patients' lives in that all lines that connected to these valves were contaminated."

Then you go on to say that you reported these discoveries and it was the discovery of dangerous equipment at the hospital where you worked and where it was your responsibility to deal with this equipment, which began the process of harassment which led to your beatings and torture and abuse.

Are we to understand that your sole "crime" was that you called attention to a safety violation in the hospital where your job made you responsible for doing that?

Mr. NELSON. Yes, sir.

Mr. LANTOS. That there was never any charge of any wrongdoing against you? Am I correct in assuming that?

Mr. NELSON. That is correct.

Mr. LANTOS. That you were not accused of drug dealing, of dealing in alcohol, of smuggling, or any other crime of any kind?

Mr. NELSON. I was never charged with a crime to the best of my knowledge.

Mr. LANTOS. The only thing that you did was call attention to unsafe conditions at the hospital where you worked?

Mr. NELSON. Yes. You would have to understand that if the blame didn't come on me, it may have come on another Saudi and that Saudi may have—had become responsible for the problem. So instead of them taking the initiative to stand up and say "it's my problem"—these valves were in these lines 10 years before I got there;

they were built there, they were built in that hospital—instead of somebody else coming up where there were problems—we were going under a JCH accreditation, which is a U.S. standard for hospitals. They were trying to bring this particular up, which is the Royal Family's hospital, to American standards.

Through this process, the medical staff was making reports of an intern we had and ad hoc committee from engineering and maintenance that were bringing together problems so that they could be corrected to bring up the hospital to this standard. In the course of the medical examination, they had found a lot of problems with patients expiring due to respiratory failures for simple-type procedures. Respiratory complications in their dental labs, for example.

In Saudi law, if I were to be responsible for the deaths of those citizens or the harm of those citizens, I think I am liable to have my head taken off. So instead of a Saudi standing up and saying, "Yes, these problems were there," they in turned tried to put the blame on me.

Mr. LANTOS. But there was absolutely no other charge against you except you pointed out some safety problem?

Mr. NELSON. I am not aware of any charges being brought up against me.

FORMAL PROTEST TO THE SAUDI GOVERNMENT

I would like you to tell me, Mr. Secretary, when is the last time we specifically in writing protested to the Saudi Government about the abuses that you heard documented here today?

Mr. CREEKMORE. Can I provide that for the record?

Mr. SMITH of Florida. I would very much appreciate that. I am sure the committee would, also.

Mr. CREEKMORE. Be happy to do so.

[The information follows:]

CASE OF HENRY S. RAMSEY

Ramsey was arrested on December 30, 1985 at the Dhahran International Airport for possession of hashish. When he saw a consular officer the following day, he said that arresting officers had forced him to do thirty kneebends until he vomited. The consular officer immediately made an oral protest. Two weeks later, Ramsey complained of the behavior of a prison guard. He said a guard had "fondled" his genitals during a routine inspection following the Ramseys' conjugal visit. The consular officer immediately mentioned this incident to the prison director. Since oral protests were effective, the consular officer did not believe a formal written protest was required. Ramsey was deported on March 17, 1986.

CASE OF SCOTT J. NELSON

On September 24, 1984, Nelson was arrested for having presented Saudi officials with a fraudulent college degree from MIT as proof of job qualifications. He was visited by a consular officer on September 30. During that visit, Nelson claimed to have been "roughed up" by arresting officials. The consular officer noted however that Nelson had no bruises or marks. There was no indication of undue stress as he talked freely while drinking a cola and smoking cigarettes. The officer determined that Nelson's allegation was not credible and made no protest.

During a visit on October 9, Nelson told the consular officer that he had been beaten by prison guards. The consular officer found no evidence of this. The consular officer had also been visited two days earlier by Nelson's former cellmate who said that Nelson had provoked the prison guards by feigning illness to obtain a transfer to the more pleasant surroundings of a hospital. The matter was not raised with local authorities since the consular officer could not determine to what extent Nelson resisted legitimate prison discipline. Nelson was deported on November 12, 1984.

CASE OF SAM BAMIEH

Bamieh was reportedly held in Saudi Arabia against his will from March 4 to July 15, 1986 by two Saudi officials as a means of forcing him to drop a civil lawsuit pending against them in the United States. Bamieh never sought assistance from U.S. officials. On July 1, 1986, he entered the commercial section of the U.S. Consulate General in Jeddah to pick up a telex which had been sent to him from the United States. He made no comment to anyone in the office. No oral or written protest was ever made by U.S. officials since Bamieh never brought his difficulties to their attention.

CASE OF JIM SMRKOVSKI

As previously noted, U.S. officials did not protest Smrkovski's allegations of mistreatment by arresting officials as he specifically asked that no protest be filed for fear of jeopardizing a possible amnesty. The Embassy did submit a diplomatic note to the Ministry of Foreign Affairs on July 23, 1986 to protest the fact that Smrkovski was being held incommunicado. Consular officers had been denied access to Smrkovski from June 22-September 6, 1986, a period of sixty-three days.

Mr. SMITH of Florida. Thank you very much.

Thank you, Mr. Chairman.

ADMINISTRATION COMMENTS ON TESTIMONY OF PRIVATE WITNESSES

Mr. LANTOS. We have been at this now for almost 3½ hours, so I would like to conclude with just a couple of questions, Mr. Creekmore.

I welcome the other gentlemen commenting, also.

Do you have any question about the veracity of the witnesses of the previous panel?

Mr. CREEKMORE. Mr. Chairman, I was not here for all of it but I certainly would not question the word of what

they say. I will simply, without being able to be absolutely certain about it, take what they say.

Mr. LANTOS. Mr. Adams, you are more familiar with these cases than probably anybody else on the panel. You have studied these cases. You have probably met all these people. Is there any doubt in your mind of their veracity?

Mr. ADAMS. No, there is no doubt in my mind.

Mr. LANTOS. There is no doubt in your mind.

Mr. ADAMS. I don't challenge their veracity, no.

Mr. LANTOS. The Department doesn't challenge the veracity of any of our witnesses?

Mr. ADAMS. No.

Mr. LANTOS. Could one of you state that for the record.

Mr. ADAMS. That is correct.

AFFIDAVIT

I, ABDULLAH JARY ASSABHAN, of P.O. Box 1454, Riyadh 11431, Saudi Arabia, make oath and say as follows:—

1. I am a Saudi Arabian advocate licenced to appear in all Saudi Arabian Courts and tribunals and to practice all aspects of Saudi Arabian law. I received my legal education at the Imam Mohammed Bin Saud Islamic University and the Institute of Public Administration in Riyadh and became a fully qualified advocate in 1983. I am at present working at The Law Firm of Salah Al-Hejailan (which is associated with the English Law Firm of Clifford Chance) in Riyadh. I am competent to testify to the matters set forth herein which are based upon my personal knowledge.

2. In Saudi Arabia disputes between employers and employees are subject to the jurisdiction of specialist Labour Committees. The Labour Committees apply a body of fair substantive law governing the rights and duties of employer and employee and provide redress for personal injuries suffered in violation of Saudi law. The rights and duties of employer and employee (including the duty of an employer to compensate an employee for occupation-related injuries arising in certain specified circumstances) are regulated in considerable detail by the Saudi Arabian Labour Law ("the Labour Law") (Royal Decree no. M/21 dated 6 Ramadan 1389/15th November 1969).

3. I am informed that Mr. Scott Nelson has alleged that:—

"As recruiter and/or employer of the Plaintiff, [the Kingdom of Saudi Arabia and the King Faisal Specialist Hospital] owed to the Plaintiff the duty to exercise due care to prevent injury to the Plaintiff, including the duty to adequately warn and instruct him of the hidden dangers associated with the employment".

and that the King Faisal Specialist Hospital and the Kingdom of Saudi Arabia:—

"knew or should have known that officials of the Saudi government, and officials of Saudi institutions such as KFSH, have, and sometimes exercise, the power to have persons summarily arrested, detained, and physically abused, without legal cause."

and that:—

"officials of the King Faisal Specialist Hospital would be likely to take severe retaliatory action against Nelson if he reported and/or attempted to remedy, and/or disclosed to others, any health related or other hazards or problems which he discovered in King Faisal Specialist Hospital".

However, Saudi Arabian law does not impose a duty on a recruiter or employer of labour to warn employees of any such hazard as are alleged above, either before or during employment. An employer may certainly, under Saudi Arabian law, be liable for certain injuries incurred by an employee arising out of the hazards of his employment, but an employer will not be liable for failure to warn the employee of such hazards as are alleged by the Plaintiff, either in advance of his employment or during the same. We are unaware of any case where a Saudi Court has imposed on an employer a duty to warn in respect of any occupational hazards.

4. Further, the Plaintiff's allegation that Saudi officials have, and sometimes exercise, the power to have persons summarily arrested, detained, and physically abused without legal cause is incorrect. Neither Saudi government officials nor Saudi government entities nor any other person or entity in Saudi Arabia has the power, to have persons summarily arrested, detained and physically abused without legal cause. Such action would be contrary to Saudi law.

5. All claims arising out of an alleged breach of the Labour Law (including claims for occupation-related injuries) are time-barred after 12 months from the date of such alleged breach or 12 months from the date of termination of the employment contract in question.

SWORN this 21st day of June, 1989 at Al-Dahna Centre Building, Al-Ahsaa Street, Riyadh, Saudi Arabia Before me, R. T. Price.

An English Solicitor empowered to administer oaths.

AGREEMENT

THE ROYAL CABINET OF THE KINGDOM
OF SAUDI ARABIA

and

HOSPITAL CORPORATION OF AMERICA, LTD.

KING FAISAL SPECIALIST HOSPITAL

RIYADH, SAUDI ARABIA

THIS AGREEMENT made and entered into this 26th day of August, 1973 by and between the Royal Cabinet of the Kingdom of Saudi Arabia, represented by the Private Office of His Majesty King Faisal Bin Abdul Aziz (referred to hereinafter as the "Owner") and Hospital Corporation of America, Ltd., a company duly established under the laws of the Cayman Islands, whose registered office is situated at Barclays Bank Building, George Town, Grand Cayman Islands (referred to hereinafter as "HCA");

WITNESSETH:

WHEREAS, Owner is constructing the King Faisal Specialist Hospital in Riyadh, Kingdom of Saudi Arabia and related housing and other facilities (referred to hereinafter as "Hospital"), the Hospital containing 245 beds, with completion of construction scheduled for December, 1974; and

WHEREAS, HCA is a wholly-owned subsidiary of Hospital Corporation of America, a corporation organized and existing under the laws of the State of Tennessee, U.S.A. (hereinafter referred to as "HSP"), which operates 51 hospitals in the U.S.A. and which has the expertise and experience reflected in the documents attached hereto and collectively referred to as Annex A, with capability to staff and assume management of operations of the Hospital; and

WHEREAS, HCA has entered, or will enter into contracts with parties which are contractors with Owner providing, respectively, the computer communication network, laboratory and nuclear medicine systems, and the equipment and supplies for the Hospital, whereby such parties will provide continuing services to HCA and the Hospital.

WHEREAS, the parties hereto wish to establish the terms and conditions of their relationship.

NOW, THEREFORE, it is agreed by and between the parties hereto as set forth herein, that HCA shall act for Owner as follows:

I. SCOPE OF AGREEMENT

1.1 HCA will, on the effective date of this Agreement, assume the overall responsibility of recruiting the technical, administrative and other staff which will be required to open and operate the Hospital and, to the extent specified by Owner, will recruit the medical staff. HCA will also coordinate the managerial aspects of the Hospital with the work being done by others in completing the construction and equipping of the Hospital. On or before the date when the Hospital is first open and receiving patients, Owner has contracted for an inventory of supplies for operation and maintenance of all departments of the Hospital. Upon the commissioning of the Hospital, HCA will assume complete management responsibility for operations of the Hospital, as described hereafter in this Agreement. Throughout the term of this Agreement, HCA will continue to keep Owner advised of developments and innovations in delivery of health care and hospital management of which it may become apprised.

1.2 HCA will immediately commence recruitment activities of personnel to be employed at the Hospital. Attached hereto as Annex B is preliminary staffing chart showing the categories of professional and other employees and the estimated number required to fully staff the Hospital. Owner shall approve the standard form of employment contract which HCA will use in the recruitment activities of expatriate personnel, in order to assure that such contract adequately sets forth the conditions of employment of the Hospital deemed necessary by Owner. All such employment contracts will be between Owner and the employee, but may be executed for Owner by HCA as agent. The payment of salaries and benefits of staff personnel will be administered by HCA for the Owner,

as provided in Section 4.4 hereafter. All expatriate personnel recruited must be acceptable to Owner which acceptability shall be evidenced by issuance of an entrance visa.

(a) Owner and HCA shall agree upon the number and composition of the medical staff, after which HCA shall recruit candidates for such position. It is agreed that Owner shall, after consultation with HCA, select the candidates to be employed and shall set their salary and other remuneration; Or, upon Owner's request, HCA will assume such responsibility to select, to employ, and to set remuneration of the medical staff. Owner shall bear the costs of physicians' travel, other expenses in accordance with the provisions of the respective employment contracts, remuneration and related expenses. HCA will make available to the medical staff, from time to time as a part of an ongoing medical education program, the full facilities of the hospitals in the United States owned and operated by HSP. Members of the medical staffs of such hospitals will from time to time, at the Owner's request, conduct specialized educational programs for members of the medical staff of the Hospital in HSP hospitals or other facilities in the United States. It is agreed that Owner will be responsible for the travel and living expenses incurred by members of the medical staff in connection with their participation in such medical and education program for such period of time as may be decided by Owner from time to time.

(b) HCA will recruit and employ administrative, nursing, technical, maintenance and all other personnel with full authority to initially set and subsequently adjust their salaries and other remuneration, to supervise such employees, and in its sole judgment, to terminate the employment of any such personnel. All travel expenses in accordance with the provisions of the respective employment contracts of personnel employed by HCA will be paid by Owner, including such expenses

of replacement of personnel employed from time to time. HCA will also make available to all personnel the full facilities of the hospitals in the United States owned and operated by HSP for specialized continuing education programs at times and on schedules as may be mutually agreeable with HCA and Owner. As in the case of the medical staff, Owner will be responsible for the travel and living expenses incurred by such personnel in connection with their attendance at educational programs for a period of time to be decided by Owner, from time to time.

(c) HCA will provide a management team of not less than four professional persons to supervise the operation of the Hospital consisting of at least an Executive Director, Association Director, Controller and Director of Nursing Services. The members of this management team will be employees of HCA and their salaries will be paid by HCA.

(d) HCA will be guided by local laws and customs in making staff assignments of employees and will use its best efforts to enforce compliance therewith by all personnel.

1.3 When the Hospital is commissioned, HCA will assume complete management responsibility for all operational matters, patient care, clinical research activities related to patient care, maintenance of all buildings, power services, engineering systems, equipment and grounds, providing of supplies to the extent reflects on Schedule A, in-service training of personnel, long-range planning, and such other matters as may from time to time be delegated by Owner or its representatives. In addition, HCA will cooperate and where appropriate, coordinate with members of the medical staff to maximize quality patient care, facility utilization and physician-patient-employee relationships. It is understood that Owner may, at some time hereafter, utilize the Hospital together with such additional facilities, equipment and

supplies as may be appropriate, to conduct fundamental research which is not contemplated by this Agreement and the expenses of which are not included in the contract price. Should Owner make such determination, HCA will advise and consult with Owner as to such research and provide estimates and budgets as to capital expenditures and operational costs and administer such program to the extent Owner may delegate authority.

1.4 It is recognized that availability of housing facilities is essential in order to attract and retain personnel from without Saudi Arabia. HCA will assume responsibility for operation, maintenance and supervision of the housing unit and related facilities on the Hospital premises. Owner will bear all expenses of furnishing such facilities. Where housing facilities on-site are not allocated to expatriate personnel, Owner agrees to pay a housing allowance for such personnel employed at the Hospital in accordance with regulations in effect from time to time in the Kingdom of Saudi Arabia. Owner agrees that employees of HCA, its sub-contractors, and other personnel recruited by HCA shall be permitted to bring personal belongings into Saudi Arabia, excluding such items as Owner may specify, without custom and duty charges. Owner will provide the procedures whereby such personnel may conveniently obtain necessary entrance and exit visas and documents relating to importation and exportation of personal effects.

1.5 HCA has entered, or will enter into, contracts with Scientific Control Systems, Ltd. ("SCICON") and American Hospital Supply Universal Corporation ("AHSUC") securing the continuing services of such parties in the operation of the Hospital, in form acceptable to Owner. Such contracts will contain provisions to the effect that if HCA defaults in its performance thereunder, or if this Agreement is terminated for any reason, Owner will be substituted in the place and stead of HCA and will continue such contracts with SCICON and AHSUC.

All the above provisions shall be applicable to any other sub-contractors which HCA may enter into which shall be acceptable to Owner as to form and content.

1.6 It is acknowledged that the ultimate authority for the operation of the Hospital is Owner. The officers and employees of HCA, including specifically the Executive Director of the Hospital, will on a continual basis, consult with work in a cooperative manner with Owner and its delegates. It is further acknowledged that it is essential that HCA have access to policy and decision-making bodies in order to carry out its responsibilities under this Agreement.

1.7 Owner agrees that it will make available to all expatriate personnel employed at the Hospital and their immediate families resident in Saudi Arabia all medical and dental facilities and services provided by the Hospital at no cost to personnel.

II. RECRUITMENT POLICIES

HCA will, to the extent consistent with its responsibilities under this Agreement, give preference to citizens of Saudi Arabia in employment and will train persons with the long-range view of developing their expertise in the technical and administrative management positions of various hospital departments. HCA will make available to such personnel the extensive film library and educational aid materials utilized in HSP hospitals in the United States. However, it is recognized and agreed that initially HCA may find it necessary to employ personnel for management and supervisory functions from outside Saudi Arabia.

III. TERM

The term of this Agreement shall commence as of the date first above written and shall extend through August 31, 1980.

IV. CONTRACT PRICE

4.1 The contract price and schedule of payments is set forth on Schedule A hereto, marked "Contract Price and Schedule of Payments" and signed by the parties hereto, which schedule is incorporated by reference herein. It is agreed that such contract price is subject to adjustment commensurate with any enlargement of the total Hospital facilities.

4.2 It is understood and agreed that the contract price is based upon the complete operational management of the Hospital by HCA and makes provision for payment by it of expenses of delivery of patient care, maintenance of all buildings, power services, animal house for clinical support, transportation services, including helicopter pad, engineering systems, equipment and grounds on the basis of the design scope of the physical construction of the Hospital at the signing date of this contract and the degree of sophistication of patient care expected to be provided, but not including payment of employees remuneration. All such non-employee expenses will be paid by HCA to the extent of the contract price. However, it is further understood that the nature of patient care is highly dependent upon the state of medical technology existing at any given time. As advancements in technology are achieved, the Hospital will be operated so as to take advantage of and receive the benefits of such advancements, and restrictions on patient care will not be imposed due to increased costs which may exceed the contract price, it being the policy of the Owner to provide that quality of patient care which medical technology permits. Therefore, the contract price is divided into two categories of expenses. The amounts shown on such Schedule under items referred to as Fixed Charges for each of the fiscal periods include only those terms of pre-determinable management and operating expenses which are directly related to operation of the Hospital and maintenance of the physical facilities (on the basis of the present design, size and equipment complement) of the Hospital. As to the

amounts shown on such Schedule under items referred to as Variable Charges, HCA and HSP, based upon their experience in budget estimating gained through operating 51 hospitals in the United States, consider these amounts their present best estimates of expenses expected to be incurred in the providing of health care services to patients in the Hospital and other costs related to the operation of the Hospital in the form conceived and as it will be completed. It is recognized that the Variable Charges are also subject to variation depending upon the activities conducted in the Hospital, such as medical research, and the extent of patient care to be provided, which may include the effect on expenses of such factors as occupancy, patient categories, (e.g., open heart surgery or obstetrical care), average length of stay, number of clinic and outpatient visits, and others. Therefore, consistent with the policy of Owner as to operation of the Hospital, the scope of HCA's responsibilities and the necessarily estimated nature of the amounts shown on the Schedule, it is agreed that if it should become necessary for the delivery of patient care that the expenses of HCA for any fiscal period exceed the amounts shown on Schedule A as Variable Charges, HCA will submit to Owner financial, accounting and other data in form mutually agreeable showing actual expenditures for the period involved in excess of the estimated amounts shown as Variable Charges on Schedule A. Such submissions as may be necessary will be made no more frequently than quarterly. Upon such submission and agreement therewith by Owner, the Schedule will be amended according retrospectively as to expenses previously incurred (for which HCA shall then be reimbursed) and prospectively to include such excess costs in Variable Charges if same are of a recurring nature.

4.3 It is understood and agreed that until August 31, 1974, HCA and its sub-contractors shall pay all payroll and other labor expenses which they incur. Owner agrees to pay the salaries and allowable expenses of all physicians directly.

4.4 Effective as of September 1, 1974, personnel who shall have recruited and employed at the Hospital, shall be paid by Owner, except SCICON and AHSUC employees and the HCA management team. All operational, supply, maintenance, and other expenses of operating Hospital, to the extent of the contract amount shown on the Schedule, shall be paid by HCA. Owner will bear the expenses of all salaries and agreed upon benefits included in the remuneration arrangements of all employees at the Hospital. HCA agrees to administer the payment of all such payroll and other expenses utilizing Owner's funds which shall be deposited by Owner in a bank or other depository from time to time. Owner and HCA will agree upon the procedures to be established to assure that HCA will have available the necessary funds to timely pay such salaries and benefits expenses, it being agreed that prompt payment to employees is essential for the efficient operation of the Hospital.

4.5 The contract price is based upon the understanding that no corporation or equivalent taxes are payable by HCA but should any such taxes be or become payable, appropriate adjustments to the contract price shall be made.

V. CURRENCY AND PLACE OF PAYMENT

Payment of all amounts due to HCA under this Agreement is to be made in U.S. Dollars and deposited to the account of HCA at such depository as HCA may from time to time designate in writing.

VI. BANK GUARANTEE

HCA shall procure to Owner a letter of guarantee issued by an internationally recognized bank in Owner's favor by which such bank warrants irrevocably that all advance payments, to the extent unearned, made to HCA pursuant to the provisions of Schedule A hereto shall be reimbursed in the event of the termination of this Agreement.

VII. LANGUAGE

HCA agrees that it will, within 90 days of the date hereof deliver to Owner a translation in the Arabic language of this Agreement, including Schedule A. Notwithstanding such translation, it is agreed by Owner and HCA that the English language version of this Agreement and Schedule A shall be controlling for purposes of construction of meaning and all other purposes.

VIII. PERFORMANCE

In the event of totally unforeseen circumstances which would require HCA to be unable to continue to perform under this Agreement and it so advises Owner, nevertheless HCA will continue to operate the Hospital for a period of six months after such notice, during which time payment of the management fee other than direct costs of operating the Hospital will be withheld until final withdrawal by HCA on terms satisfactory to Owner.

IX. NOTICES

Any written notice or communication mailed or delivered by either party to the other shall be to the following addresses:

If to Owner: King Faisal Specialist Hospital
Royal Cabinet
Post Office Box 2727
Riyadh, Saudi Arabia

If to HCA: Hospital Corporation of America, Ltd.
Post Office Box 550
Nashville, Tennessee, U.S.A. 37202

X. SUFFICIENCY OF AGREEMENT INSTRUMENT

10.1 The terms and conditions contained in the present instrument and the annexes thereto constitute the entire agreement between the parties hereto in respect of the

subject thereof and shall supercede any and all prior communications, representations, agreements and/or understandings, either oral or written, between the parties hereto in respect of said subject matter.

10.2 If any one of the terms and conditions of this Agreement would appear to be or to become ineffective for any cause or reason whatsoever, the ensuing nullity shall not affect any other provision or provisions hereof and the parties hereto agree to substitute in any such event forthwith such other effective provisions as will most closely correspond with the legal and economic contents of the provisions so avoided.

XI. AMENDMENTS

It is acknowledged by Owner and by HCA that this Agreement may be amended from time to time dependent upon changing circumstances, increased responsibilities of HCA and other contingencies. It is therefore agreed that any such amendments shall be effected only by written instrument executed on behalf of the Hospital by His Excellency Dr. Rifat Alsayed Ali and on behalf of HCA by Dr. Thomas F. Frist, Jr. or Thomas W. Todd.

Should either party for any reason desire to change its authorized delegate for this purpose, this Agreement shall be amended as set forth in this section.

IN WITNESS WHEREOF, the parties hereto have set their hands the 26th day of August, 1973.

SIGNED BY: His Excellency
authorized by the Royal Cabinet
of the Kingdom of Saudi Arabia

/s/ [Illegible]

SIGNED BY: /s/ John C. Neff
President for Hospital Corporation of America, Ltd.

SCHEDULE OF CONTRACT AMOUNT AND PAYMENT
YEAR OF OPERATIONAL BUILD-UP
1 September 1973 - 1 September 1974
(U.S. DOLLARS IN THOUSANDS)

PERIOD I Hospital Corporation Complete Orientation to Hospital, Equipment, Contracts, and Warranties. Development of Staffing Plans, Remuneration Programs, Employee Contracts, and Classifications.

PERIOD II Establishing Recruitment Sources Worldwide. Establishing Recruitment Materials: Films, Brochures, Documents for All Levels of Personnel. Interface Management Techniques With the Unique Technology of the Hospital, With Special Reference To The Computer/Communication Network.

PERIOD III Recruitment of Employees and Medical Staff. Development of Operational Systems and Manuals. Establishing of King Faisal Specialist Hospital Permanent Management Team.

* * * *

CONTRACT PRICE THIS PERIOD 3,750

* * * *

PAYMENT SCHEDULE

1 September 1973	375
31 December 1973	1,500
1 May 1974	1,875
	3,750

/s/ John C. Neff
President
For Hospital Corporation of America

/s/ Illegible
For Owner

SCHEDULE OF CONTRACT AND PAYMENT
YEAR OF BUILD-UP AND OPENING
1 September 1974 - 1 September 1975
(U.S. DOLLARS IN THOUSANDS)

A ITEMS:	Recruitment and Initial Orientation of Employees and Medical Staff, Pre-Operational Testing of all Facilities and Equipment, Implementation of Operational Systems, Opening of Hospital, Initial Operational Testing and Implementations. Reception of Patients. Takeover of Complete Operational Responsibility of the Hospital.		5,691
B ITEMS:	Variable Items Directly Related to Patient Care. It is Fully Recognized These Items Are Related to the Opening Schedule of 1 January, 1975. In the Event of Unforeseen Delay of More Than 30 Days, It Is Agreed These B Items Will Be Adjusted Downward Accordingly.		
	Utilities		170
	Supplies		
	Operating Room	170	
	Labor & Delivery	11	
	I.V.	51	
	Clinic Services	74	
	Central Supply	102	
	Laboratory & Nuclear Medicine	221	
	Blood Bank	70	
	Radiology	230	
	Pharmacy	204	
	Physical Therapy	19	
	Intensive Care	72	
	Dietary	374	
	Housekeeping	40	
	Linen & Laundry	94	
	Stationery	34	
	Medical Records & Library	20	
	Business Office	33	
	Maintenance	35	
	Nursing Service	170	
	Total Supplies		2,024
	Other Expenses:		
	Communication, Transportation		273
			2,467

/s/ John C. Neff
For Hospital Corporation of America

For Owner

CONTRACT PRICE THIS PERIOD

A ITEMS	5,691
B ITEMS	2,467
	8,158

* * * *

PAYMENT SCHEDULE

	Total	A Items	B Items
1 September 1974	1,884	1,884	—
31 December 1974	2,908	1,983	925
30 April 1975	3,366	1,824	1,542
	8,158	5,691	2,467

For Hospital Corporation of America

For Owner

AMENDMENT NUMBER THREE TO THE AGREEMENT DATED 26 AUGUST 1973 BETWEEN THE ROYAL CABINET OF THE KINGDOM OF SAUDI ARABIA (OWNER) AND HOSPITAL CORPORATION OF AMERICA, LTD. (HCA).

WHEREAS, the Agreement as extended by Amendment Number One, dated 29 June 1980, and Amendment Number Two, effective 1 September 1981 is to expire 31 August 1982:

And,

WHEREAS, the OWNER and HCA wish to extend the Agreement:

THEREFORE, the OWNER and HCA agree that the Agreement is hereby extended for a period of one year from 1 September 1982, through 31 August 1983, with the following changes, alterations and amendments:

1) HCA will provide up to four (4) full time equivalents of HCA Professional Staff at the Hospital (44 man hours per week per person), either permanent or on a consulting type basis as required by OWNER.

2) HCA is not responsible for all costs or any payments associated with the computer or data processing system. Therefore, the HCA fee is hereby reduced by an amount equal to the previous SCICON contract value for computer operations (see attached computation).

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التعديل رقم ٣ للاتفاقية المحررة في اغسطس ١٩٧٣م بين الديوان الملكي - لمملكة العربية السعودية (المالك) وشركة مستشفيات كوربوريشن اوف امريكا المحدودة (HCA) .

حيث ان الاتفاقية كما عدلت بالتعديل رقم بتاريخ ٢٩ يونيو ١٩٨٠ والتعديل رقم (٢) الساري المفعول اعتبارا من اول سبتمبر ١٩٨١ ستنتهي مفعولها في ٣١ اغسطس ١٩٨٢م .

وحيث ان المالك وشركة (HCA) يرغبان في تمديد الاتفاقية المذكورة ، لذلك تم الاتفاق بين المالك وشركة (HCA) على تمديد الاتفاقية لمدة عام واحد اعتبارا من اول سبتمبر ١٩٨٢م ولغاية ٣١ اغسطس ١٩٨٣م بالتعديلات والتغييرات التالية :-

١) تقدم شركة (HCA) للمالك عددا من الاخصائيين لايتجاوز الاربعة اشخاص للعمل بالمستشفى (بمعدل ٤٤ ساعة / رجل للاسبوع للشخص الواحد) وذلك كاشخاص دائمين او على اساس استشاري وفقا لما يراه ويطلبه المالك .

٢) شركة HCA غير مسئولة عن كافة التكلفة او عن اي دفعات لها علاقة بالحاسب الالكتروني (الكمبيوتر) او انظمة المعلومات . وبناء على ذلك فقد تم تخفيض اتعاب شركة HCA بمبلغ يعادل قيمة عقدها السابق مع شركة ساكون لتشغيل الكمبيوتر - (يلاحظ بيان الحساب المرفق) .

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EXHIBIT 3

3) OWNER shall be solely responsible for recruitment from within the Kingdom of Saudi Arabia. Therefore, the HCA fee is hereby reduced by $200,000 (Two Hundred Thousand U.S. Dollars Only). (See attached computation.)

- تقع مسئولية التوظيف من ضمن المملكة العربية السعودية على عاتق المالك ، وبناء عليه فقد تم تخفيض اتعاب شركة HCA بمبلغ ٢٠٠,٠٠٠ر٠٠ دولار (مائتي الف دولار امريكي) - يلاحظ بيان الحسابات المرفق) .

4) The price for this contract year 1982/1983 (HCA annual fee "A" items) is U.S. $10,258,653 (Ten Million, Two Hundred Fifty-eight Thousand, Six Hundred Fifty-three U.S. Dollars Only). Payments equal to one-sixth (1/6) of the annual price will be made to HCA on a two-month basis in arrears, except for the first payment which will be made within thirty (30) days of signing this amendment. The maximum total backcharges and penalties for the current contract year 1982/1983 will not exceed a total of twenty percent (20%) of the above contract price. The OWNER has the right to impose such backcharges and penalties at his own and absolute judgement, HCA will pay the OWNER such backcharges and penalties without delay or object thereto for any reason whatsoever. HCA will provide the OWNER with a performance bond (Letter of Credit) for twenty percent (20%) of the above contract price from a local bank and its wording acceptable to the OWNER as an "A" Items Guarantee.

تكون قيمة العقد للسنة الحالية ٨٢/٨٣ (اتعاب شركة HCA السنوية بند أ) مبلغ ١٠,٢٥٨,٦٥٣,٠٠ دولار (عشرة ملايين ومائتان وثمانية وخمسون الفا وستمائة وثلاثة وخمسون دولارا امريكيا) تدفع لشركة HCA على ستة دفعات متساوية بمعدل دفعة في نهاية كل شهرين (باستثناء الدفعة الاولى التي تتم خلال ٣٠ يوم من توقيع هذا التعديل.
ويكون الحد الاقصى للمقتطعات والاستقطاعات من المصروفات المرفوضة للسنة التعاقدية الحالية ٨٢/٨٣ مبلغ لايتجاوز ٢٠٪ (عشرون بالمائة) من قيمة العقد اعلاه .
وحق للمالك ان يحمل شركة HCA بهذه الغرامات والاستقطاعات طبقا لتقديره المطلق . وتدفع شركة HCA للمالك قيمة هذه الغرامات والاستقطاعات بدون تأخير وبدون اعتراضات مهما كانت الاسباب .
وتقدم شركة HCA للمالك ضمان بنكي بمبلغ ٢٠٪ من قيمة العقد صادرا من بنك محلي ويكون هذا الضمان مقبولا للمالك ويعتبر هذا الضمان كضمان الاتعاب (بند أ) .

The HCA will continue to provide the OWNER with a trimester management report, and a recruiting status report every sixty (60) days.

وتستمر شركة HCA في تقديم التقرير الربع سنوي للمالك وكذلك تقدم تقريرا له عن وضع التوظيف كل ٦٠ يوما .

5) OWNER has the option of opening a Visas Liaison Office in the U.S.A., for the purpose of coordinating visa

- للمالك الخيار في ان يفتح له مكتبا للتأشيرات في امريكا لاغراض تنسيق خدمات التأشيرات بين شركة HCA والقنصليات

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services between HCA and the Saudi Arabian Consulate there, at a contract cost reduction of $108,453 (One Hundred Eight Thousand, Six Hundred Fifty-three U.S. Dollars Only) annually or pro-rata thereof.

العربية السعودية هناك . وفي هذه الحالة يتم تخفيض قيمة العقد بمبلغ ١٠٨٫٦٥٣٫٠٠ دولار (مائة وثمانية الف وستمائة وثلاثة وخمسون دولارا امريكيا) سنويا او بالتناسب مع العشرة من السنة

6) The OWNER has the option of assuming recruiting from the Middle East at a contract cost reduction of $150,000 (One Hundred Fifty Thousand U.S. Dollars Only) annually or pro-rata thereof.

للمالك الخيار في ان يتولى مهمة التعاقد من منطقة الشرق الاوسط وفي هذه الحالة يتم تخفيض العقد بمبلغ ١٥٠٫٠٠٠٫٠٠ دولار (مائة وخمسون الف دولار امريكي) سنويا او بمايتناسب مع العشرة من السنة .

7) This agreement shall be automatically extended beyond 31 August 1983 for two (2) successive terms of one (1) year each unless either party gives written notice of its intention to amend and/or change and/or not to further extend the agreement at least ninety (90) days prior to the expiration of each contract year.

تمدد هذه الاتفاقية تلقائيا لمدة سنتين متتاليتين بعد ٣١ اغسطس ١٩٨٣ سنة واحدة لكل تمديد الا اذا أخطر أحد الطرفين الطرف الآخر كتابيا في نيته لتعديل الاتفاقية تعبير نيته في عدم رغبته في تمديد العقد في موعد لايتجاوز ٩٠ يوما قبل انتهاء السنة الجارية للعقد .

8) Any terms and conditions contained in the Agreement, and Amendments One and Two, which may be inconsistent or conflict with this Amendment, are hereby superceded.

تكون شروط هذا التعديل هي الغالبة في حالة تعارضها او عدم مطابقتها لاي شرط من شروط الاتفاقية والتعديل الاول والثاني .

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS THIS 31st DAY OF AUGUST 1982.

واثباتا لذلك وقع الطرفان على هذا في اليوم والسنة المشار اليهما اعلاه بتاريخ ٣١ اغسطس ١٩٨٢م .

For HCA, Ltd.:

Dr. Calvin R. Pastors

شركة سرفيسز كوربوريشن اوف كا المحدودة

Calvin R. Pastors

د / كالفن ر. باستورز

For the OWNER:

pp for: Hussein A. Gezairy

Dr. Hussein A. Gezairy
The Authorized Representative

د / حسين أ. حزاعري
المفوض

COMPUTATION

Contract Year 1981/82 (Inflation Factor 9%)		$11,164,406 x 1.09 =	$12,169,202
LESS SCICON 1981/82 (Inflation Factor 9%)	$ 1,569,311 x 1.09 =	(1,710,549)	
LESS Local Recruiting Office Cost 1982/83	(200,000)		1,910,549
	TOTAL CONTRACT PRICE		$10,258,653

OPTIONS

LESS		
1. Visas Liaison Office Cost	(108,653)	
2. Recruiting Office (Middle East)	(150,000)	$ 258,653

TOTAL CONTRACT PRICE IF OPTIONS UTILIZED	$10,000,000

For HCA, Ltd:

Dr. Calvin R. Pastors

شركة اتش.سي.اية HCA

Calvin R. Pastors

د / كالفين ر. باستورز

For the OWNER:

Dr. Hussein A. Gezairy
The Authorized Representative

المالـــــــك:

د / حسين أ. عزاشري
المفوض

LETTER OF UNDERSTANDING

In view of the extension and amendment to the King Faisal Specialist Hospital and Research Centre and HCA, Ltd. agreement beginning September 1, 1982; and, in order to clarify certain related issues, the following items are hereby approved by both parties:

1. That the "permanent" HCA, Ltd. staff continue receiving the same benefits and use of facilities as they have in prior years.

2. That the "permanent" HCA female staff be furnished housing by the Hospital at lease cost plus 20% for utilities and maintenance.

3. That the Hospital provide the "permanent" HCA, Ltd. staff, not living in Hospital housing, villa maintenance services at SR 1,000 per month plus cost of parts.

4. That the Hospital provide HCA, Ltd. with automobile maintenance services for up to five (5) vehicles at SR 400 per vehicle per month plus cost of parts.

5. That "temporary" HCA, Ltd. female consultants be housed in Hospital housing at SR 1,000 per week per unit plus 20% for utilities.

6. Mutually agreed to additions or deletions to this list may be effected periodically.

For HCA, Ltd.:

Dr. Calvin R. Pastors

For the OWNER:

pp for:

Dr. Hussain A. Gezairy
The Authorized Representative

مذكرة تفاهم

فيما لموضوعات معينة تتصل باتفاق معدل والتعديل المبرم بين مستشفى الملك فيصل التخصصي وشركة هوسبتال كوربوريشن امريكا لمعتمد (HCA) والذي بدأ في اول سبتمبر ١٩٨٢م ، فقد تمت موافقة الطرفين على البنود الآتية : -

١. استمرار موظفي شركة HCA الدائمين في الحصول على نفس المنافع وفي استعمال التسهيلات كما كانوا في السنوات السابقة .

٢. تزويد موظفات شركة انترناشونال HCA الدائمات (من الاناث) بسكن مؤثث من المستشفى وذلك مقابل تكلفة الايجار مع اضافة ٢٠٪ للمرافق والصيانة .

٣. تزويد المستشفى موظفي انترناشونال HCA الدائمين الذين لا يسكنون بمساكن المستشفى - بالصيانة اللازمة لمساكنهم مقابل ١٠٠٠ ريال (الف ريال) شهريا بالاضافة الى تكلفة قطع الغيار .

٤. تزود المستشفى شركة انترناشونال HCA بالصيانة اللازمة لسياراتها بحد اقصى (٥) خمسة سيارات وذلك مقابل ٤٠٠ ريال (اربعمائة ريال) شهريا لكل سيارة بالاضافة الى تكلفة قطع الغيار .

٥. تزود المستشفى موظفات انترناشونال HCA الاستشاريات المؤقتات (من الاناث) بسكن في مساكن المستشفى وذلك مقابل ١٠٠٠ ريال (الف ريال) اسبوعيا لكل وحدة سكنية بالاضافة الى ٢٠٪ للمرافق .

٦. يجوز الاضافة على او الحذف من هذه القائمة وذلك باتفاق الطرفين من وقت لآخر .

شركة انترناشونال HCA

ر / كالفين ر. باستورز

المالك

ر / حسين أ. جزائري
الدور المعتمد

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title Omitted in Printing)

MEMORANDUM OPINION

[Filed Aug. 11, 1989]

This cause is before the court on Defendants' motions to dismiss for lack of subject-matter jurisdiction under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602-1611.

Facts

King Faisal Specialist Hospital ("KSFH"), located in Riyadh, Saudi Arabia, is owned and controlled by the Saudi government. Royspec (short for "Royal Specialists"), a separate corporate entity also owned and controlled by the Saudi government, is KFSH's purchasing agent. Royspec maintains an office in Maryland, and purchases hospital supplies and equipment in the United States. Until 1979, a U.S. corporation performed both purchasing and employee recruitment functions for KFSH in the United States, but in that year, the Saudi government created Royspec as purchasing for KFSH.

Plaintiff Scott Nelson was hired as Monitoring Systems Engineer at KFSH after being recruited for the position by Hospital Corporation of America ("HCA") or an affiliated company. After a job interview in Saudi Arabia, Nelson returned to the United States, and in November 1983, while in Miami, signed an employment contract with KFSH. Nelson began his job in Riyadh the following month after attending orientation sessions conducted by HCA or an affiliated company in Tennessee.

As set forth in his job description, Nelson was responsible for assuring compliance with safety regulations, as well as for coordinating all technical activities and recom-

mending modifications of the hospital's equipment. Nelson alleges that he repeatedly reported safety violations to a government commission and in retaliation, government agents unlawfully arrested him.[1] He further alleges that he was held against his will for 39 days, during which time he was interrogated, shackled, beaten, and tortured. In a sixteen-count complaint against KFSH, Royspec, and the Kingdom of Saudi Arabia, Nelson and his wife attempt to state causes of action based on international law, common law torts, and derivative claims.[2]

Discussion

In two separate motions to dismiss, the Defendants question this court's subject-matter jurisdiction over the complaint. Nelson's complaint alleges that jurisdiction is premised upon diversity of citizenship, 28 U.S.C. § 1331, and the Alien Tort Statute, 28 U.S.C. § 1350. In January of this year, however, the United States Supreme Court expressly held that "the FSIA provides the sole basis for obtaining jurisdiction over a foreign state in federal court." *Argentine Republic v. Amerada Hess Shipping Corp.*, 109 S. Ct. 683, 690 (1989). Therefore, this court's subject-matter jurisdiction, if it exists at all, must be premised upon 28 U.S.C. § 1330(a), which provides that the district courts shall have original jurisdiction of any action against a foreign state if the foreign state is not entitled to immunity under the FSIA.[3]

[1] Defendants allege that Nelson was arrested when the government discovered he had misrepresented his credentials, rather than in retaliation for reporting safety violations; however, those disputed facts are not relevant to the motions to dismiss.

[2] In a separate complaint, case no. 88-0484-Civ-Nesbitt, the Nelsons are suing HCA and HCA International Company for negligent failure to warn of the hazards associated with working in Saudi Arabia. Although the cases arise from the same facts, the two actions were never officially consolidated by any order of this court.

[3] The question of whether a foreign state is entitled to immunity involves resolution of factual issues, complicated in this case by the separate complaint against two U.S. corporations. The United States Court of Appeals for the Eleventh Circuit has noted that a district court is not required to accept the allegations of a complaint as true if a 12(b)(1) motion attacks the asserted factual basis of jurisdiction. *See Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 731 (11th Cir. 1982). Under the FSIA, however, the burden is on the party seeking immunity to establish that no exception to immunity applies. *Arango v. Guzman Travel Advisors Corp.*, 621 F.2d 1371, 1378 (5th Cir. 1980) (citing H.R. Rep. No. 1487, 94th Cong. 2d Sess. 17 (1976); *Behring Internat'l, Inc. v. Imperial Iranian Air Force*, 475 F.Supp. 396, 405 & n. 9 (D.N.J. 1979)). Defendants in this case are in the position of having to prove a negative, with the advantage that the allegations of the complaint are *not* presumed to be correct. The court has been careful to confine its resolution of the jurisdictional issue to this case without resolving the disputed issues raised in the related case against HCA and HCA International.

The FSIA grants immunity to foreign states, with certain exceptions outlined in § 1605. The parties agree that the only exception to immunity that might apply in this case is § 1605(a)(2), clause 1. That section states, "A foreign state shall not be immune from the jurisdiction of courts of the United States . . . in any case in which the action is based upon a commercial activity carried on in the United States by a foreign state." A "commercial activity carried on in the United States by a foreign state" is defined as commercial activity carried on by the foreign state and having "substantial contact with the United States." 28 U.S.C. § 1603(e). A "commercial activity" is further defined as "either a regular course of commercial conduct or a particular commercial transaction or act." 28 U.S.C. § 1603(d).

The inquiry, therefore, is two-fold: first, did any of the Defendants carry on commercial activities having substantial contact with the United States, and second, are any of Nelson's claims based upon those commercial activities?

The parties do not dispute that Royspec, which maintains an office in Maryland and purchases supplies and

equipment in the United States, carries on commercial activities in this country. The only commercial activities allegedly undertaken in this country by Saudi Arabia and KFSH, however, relate to Nelson's recruitment. Neither KFSH nor the Saudi government was directly involved in Nelson's recruitment; rather, KFSH or the government entered into a contract with a U.S. corporation, which performed the actual recruitment activities. The agreement with the American corporation may represent a commercial transaction, but Nelson was not a party to that contract. In fact, the agreement serves to separate the Saudi defendants from recruitment activities in the United States, because the U.S. corporation in essence acted as a middleman: Nelson dealt with the U.S. corporation, which in turn had an agreement with a Saudi governmental entity in Arabia.

Nelson's complaint, however, alleges that the recruitment arrangement established an agency relationship between the Defendants and the U.S. corporation. This allegation implicates the related case against HCA and HCA International, because Nelson seeks to hold the Saudi government responsible for any duty breached by its alleged agent. The court does not find it necessary to resolve the agency question, which may be a pivotal factual issue in the related case, because the link between the recruitment activities and the Defendants is not sufficient to establish "substantial contact" with the United States.

In discussing the meaning of "substantial contact" under § 1603(e) of the FSIA, the United States Court of Appeals for the District of Columbia Circuit has referred to the statute's legislative history. That court noted that Congress gave several examples of substantial contact, such as transactions performed in whole or in part in this country, import-export transactions, business torts, and financing or loan agreements involving American financial institutions. *See Zedan v. Kingdom of Saudi Arabia*, 849 F.2d 1511, 1513 (D.C. Cir. 1988) (quoting H.R. Rep. No.

1487, 94th Cong., 2d Sess. 17, reprinted in U.S. Code Cong. & Admin. News 1976, pp. 6604, 6615, 6616). The Court finds that the recruitment activities purportedly undertaken by Defendants, albeit indirectly through their alleged U.S. agents, do not qualify as substantial contact between a foreign state and the United States under any of these examples. Although the recruitment agreement could conceivably be considered a transaction performed in part in this country, the transaction involved only the Saudi government and a U.S. corporation. Nelson was not a party to that contract; rather, he was involved in a separate transaction with the U.S. corporation. The court therefore concludes that for purposes of Nelson's complaint, the Saudi defendants have not had substantial contact with the United States.

Nelson also argues that because he signed his employment contract with KFSH while in Miami, KFSH has had substantial contact with this country. The court disagrees. Nelson was interviewed by KFSH in Saudi Arabia, and the employment contract was to be performed in Saudi Arabia. It is a fortuitous happenstance that Nelson signed the agreement while in Miami, rather than while in Saudi Arabia or at some other location. As Congress noted, the definition of substantial contact was "intended to reflect a degree of contact beyond that occasioned simply by U.S. citizenship or U.S. residence of the plaintiff." H.R. Rep. No. 1487, 94th Cong., 2d Sess. 17 (1976).

For these reasons, the court concludes that neither KFSH nor Saudi Arabia has carried on commercial activity in the United States, as defined in § 1603(d) and (e) of the FSIA. The court has found, however, that Royspec has been engaged in commercial activity; accordingly, the court must proceed to the second step in the analysis and consider whether Nelson's complaint is based on Royspec's commercial activity.

Although the United States Court of Appeals for the Eleventh Circuit has not considered the interpretation of "based upon" as used in § 1602(a)(2), the former Fifth Circuit has stated that the focus of the inquiry "is on whether the particular conduct giving rise to the claim in question actually constitutes or is in connection with commercial activity." *Arango v. Guzman Travel Advisors Corp.*, 621 F.2d 1371, 1379 (5th Cir. 1980). In discussing the *Arango* decision, as well as decisions from other federal courts, the current Fifth Circuit has noted that *Arango* is consistent with the so-called "nexus test," in which the court looks for a nexus between the commercial activity and the allegations of the complaint. *See Vencedora Oceanica Navigacion v. Compagnie Nationale Algerienne de Navigation*, 730 F.2d 195, 203 (5th Cir. 1984). Therefore, the appropriate inquiry in the instant case is whether Nelson's complaint has a connection or nexus with Royspec's commercial activity in this country.

As noted, Royspec is the purchasing agent for KFSH. The only connection between Royspec and Nelson is that Nelson was given Royspec's phone number in Maryland as a way for his family to contact him in the event of an emergency. The court finds absolutely no nexus between Royspec's business and the torts alleged in Nelson's complaint (negligent failure to warn, battery, false imprisonment, and derivative claims by Vivian Nelson). Because no nexus exists between the torts and the commercial activity, the exception to immunity under § 1602(a)(2) is inapplicable to Royspec, and the court is therefore without subject-matter jurisdiction to consider Nelson's claims against Royspec.

Furthermore, even if the court had determined that KFSH and Saudi Arabia had carried on commercial activities having substantial contact with the United States through the indirect recruitment activities, the court would be unable to find a nexus between those activities and Nelson's complaint. A different question would be

presented if Nelson had alleged some type of commercial cause of action arising from the employment contract.[4] The gravamen of Nelson's complaint, though, is an action for personal injuries under various theories of law. Although Nelson argues that but for his recruitment in the United States, he would not have taken the job, been arrested, and suffered the personal injuries, the court finds this "connection" far too tenuous to support jurisdiction over a foreign sovereign.

Similarly, the court finds that Nelson's causes of action based on negligent failure to warn have no nexus with commercial activities in this country. Such a conclusion is implicit in the finding that neither KFSH nor Saudi Arabia's commercial activities had substantial contact with the United States. Nelson argues that he should have been warned when recruited that the job for which he was hired (reporting safety violations to the Saudi government) involved the risk of imprisonment and torture. Nelson does not allege that the commercial activities indirectly undertaken by the Saudi defendants in this country were for the purpose of imprisoning and torturing U.S. citizens. Again, the "connection" between the cause of action alleged and the Defendants' commercial activities would be too tenuous to support subject-matter jurisdiction over a foreign sovereign.

For the above-stated reasons, the court concludes that all three Defendants have met their burden of establishing sovereign immunity, and that the court lacks subject-matter jurisdiction to consider Nelson's claims against the Saudi defendants. The court therefore declines to reach the issue of whether the act of state doctrine would apply to the facts of this case.[5]

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[4] The court recognizes, however, that if Nelson had pleaded a contract cause of action, the forum selection clause of the employment contract would require the parties to litigate in Saudi Arabia.

[5] The court also finds it unnecessary to consider the question of venue, although Defendants' motions devoted more time to that

This cause will be DISMISSED for lack of subject-matter jurisdiction under 28 U.S.C. § 1330(a) by separate order. The trial date in case no. 88-0484-Civ-Nesbitt will also be set by separate order.

DONE and ORDERED in chambers, Miami, Florida, this 11th day of August 1989.

/s/ Lenore C. Nesbitt

LENORE C. NESBITT
United States District Judge

cc: Jorge A. Duarte, Esq.
Marc Cooper, Esq.
Maureen E. Mahoney, Esq.
Scott E. Perwin, Esq.

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issue than to the question of subject-matter jurisdiction. It is axiomatic that the court must determine whether it has jurisdiction over a matter before reaching other issues.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 89-5981

SCOTT NELSON and VIVIAN NELSON, Individually and as Husband/Wife,
Plaintiffs-Appellants,

v.

SAUDI ARABIA, KING FAISAL SPECIALIST HOSPITAL, ROYSPEC,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

Feb. 21, 1991

Jorge A. Duarte, P.A., Miami, Fla. and Anthony D'Amato, Northwestern University School of Law, Chicago, Ill, for plaintiffs-appellants.

Maureen E. Mahoney, Lathan & Watkins, Washington, D.C., for Saudi Arabia.

Marc Cooper, Wolfe & Bolotin, P.A., Miami, Fla., for King Faisal Hosp. and Saudi Arabia.

Before EDMONDSON and BIRCH, Circuit Judges, and RE *, Chief Judge.

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* Honorable Edward D. Re, Chief Judge of the United States Court of International Trade, sitting by designation.

RE, Chief Judge:

Plaintiffs-appellants, Scott and Vivian Nelson, appeal from a judgment of the United States District Court for the Southern District of Florida, dismissing their claim against defendants-appellees, Saudi Arabia, King Faisal Specialist Hospital, and Royspec, for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act of 1976.

Scott Nelson was hired, in the United States, as a monitoring systems engineer for the King Faisal Specialist Hospital (the Hospital) in Riyadh, Saudi Arabia. Nelson alleged that, in the course of performing his duties under his employment contract with the Hospital, he was detained and tortured by agents of the Saudi government in Saudi Arabia in retaliation for reporting safety violations at the Hospital.

Nelson brought suit for his injuries against Saudi Arabia, the Hospital, and Royspec, a corporation owned and controlled by the government of Saudi Arabia (collectively Saudi Arabia). Nelson alleged subject matter jurisdiction under the Foreign Sovereign Immunities Act of 1976 (the FSIA). The district court concluded that Nelson's claims were not based upon the commercial activities of Saudi Arabia carried on in the United States, as required by the FSIA, and granted Saudi Arabia's motion to dismiss for lack of subject matter jurisdiction.

On appeal, Nelson contends that the district court erred in granting Saudi Arabia's motion to dismiss. Nelson asserts that, since his detention and torture were based upon his recruitment and hiring in the United States by an agent of the Saudi government, the district court has subject matter jurisdiction under the FSIA.

The question presented is whether the district court erred in determining that it does not have subject matter jurisdiction under the FSIA. More specifically, did the court have jurisdiction in this action for damages for the

detention and torture of Nelson by agents of the Saudi government, in Saudi Arabia, in retaliation for Nelson's conduct his employment in Saudi Arabia in a position for which he was recruited and hired in the United States by an agent of the Saudi government.

Since we conclude that Nelson's detention and torture were based upon the recruitment and hiring of Nelson in the United States by an agent of the Saudi government, and that the recruitment and hiring was a commercial activity of Saudi Arabia, we hold that the district court has subject matter jurisdiction under the FSIA. Accordingly, we reverse the judgment of the district court.

BACKGROUND

In 1983, Scott Nelson, while in the United States, saw a printed advertisement recruiting employees for the King Faisal Specialist Hospital (the Hospital), in Riyadh, Saudi Arabia. The recruitment was conducted by the Hospital Corporation of America (HCA), an independent corporation which, in 1973, had contracted with the Royal Cabinet of the Kingdom of Saudi Arabia to recruit employees for the hospital.

After submitting an application, Nelson was interviewed in Saudi Arabia by two officials of the Hospital. Subsequently, he returned to the United States, and entered into a contract of employment with the Hospital as a monitoring systems engineer. The contract was signed in Miami, Florida, in November, 1983.

Nelson commenced employment at the Hospital on December 7, 1983. As stated in the Hospital's job description for monitoring systems engineer, Nelson was "[r]esponsible for the development and expansion of electronic monitoring and control systems capabilities." He was also responsible for recommending "modifications of existing equipment and the purchase and installation of new equipment."

Nelson alleges that, on March 20, 1984, in the course of his duties at the Hospital, he discovered certain safety hazards, and reported these safety hazards to an investigative commission of the Saudi government. Nelson states that, on September 27, 1984, he was summoned to the Hospital's security office by agents or employees of the Hospital. He alleges that, from the security office, he was moved to a jail cell where he was "shackled, tortured and beaten" by agents or employees of the Saudi government. Nelson states that he was imprisoned for 39 days, during which time he was never informed of any charges against him, nor was he ever accused of a crime. He further states that his wife was told by a Saudi government official that he could be released if she provided sexual favors.

Nelson and his wife, Vivian Nelson, sued Saudi Arabia, the Hospital, and Royspec, a corporation owned and controlled by the Saudi government which acts as a purchasing agent for the Hospital. Nelson sought compensatory and punitive damages under 16 counts, and asserted that the district court had subject matter jurisdiction under the Foreign Sovereign Immunities Act of 1976, codified at 28 U.S.C. §§ 1602-1611. Saudi Arabia moved for dismissal for lack of subject matter jurisdiction.

The district court concluded that "the link between the recruitment activities and the Defendants is not sufficient to establish 'substantial contact' with the United States," within the meaning of 28 U.S.C. § 1603(e). *Nelson v. Saudi Arabia*, No. 88-1791, slip op. at 5 (S.D.Fla. Aug. 11, 1989). The district court also noted that "even if the court had determined that [the Hospital] and Saudi Arabia had carired on commercial activities having substantial contact with the United States through the indirect recruitment activities, the court would be unable to find a nexus between those activities and Nelson's complaint." *Id.* at 8. Accordingly, the district court granted Saudi Arabia's motion to dismiss for lack of

subject matter jurisdiction, thereby dismissing the action against all defendants.

DISCUSSION

In *The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116, 136, 3 L.Ed. 287 (1812), the Supreme Court adopted the common law doctrine of foreign sovereign immunity. As noted in *The Schooner Exchange*, the doctrine of foreign sovereign immunity rests on principles of comity between nations. *See id.* at 135-36. *See also Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486, 103 S.Ct. 1962, 1967, 76 L.Ed.2d 81 (1983).

On the question of foreign sovereign immunity, the Supreme Court has generally deferred to the decisions or recommendations of the Executive Branch of government. *See id.; Ex Parte Republic of Peru*, 318 U.S. 578, 586-90, 63 S.Ct. 793, 799-800, 87 L.Ed. 1014 (1943) (discussing reasons for deferring to Executive Branch). Consequently, "[f]or more than a century and a half, the United States generally granted foreign sovereigns complete immunity from suit in the courts of this country." *Verlinden*, 461 U.S. at 486, 103 S.Ct. at 1967.

The doctrine of foreign sovereign immunity is closely related to the act of state doctrine. As articulated in *Underhill v. Hernandez*, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897), under the act of state doctrine:

> Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.

Id. at 252, 18 S.Ct. at 84. *See also Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 691 n. 7, 96 S.Ct. 1854, 1859 n. 7, 48 L.Ed.2d 301 (1976).

Neither the doctrine of foreign sovereign immunity nor the act of state doctrine are as widely applied now as in the past. Indeed, it was suggested years ago that the act of state doctrine had "earned a well-deserved rest." E. Re, *Foreign Confiscations in Anglo-American Law* 170 (1951). *See also* Cardozo, *International Law in the New York Courts—1953*, 40 Cornell L.Q. 97, 109 (1955) ("the urge to grant sovereign immunity has also lost much of its force"). Surely, "the mere assertion of sovereignty as a defense to a claim arising out of purely commercial acts by a foreign sovereign is no more effective if given the label 'Act of State' than if it is given the label 'sovereign immunity.'" *Alfred Dunhill*, 425 U.S. at 705, 96 S.Ct. at 1866.

The present restrictive attitude in the application of the act of state doctrine is reflected in Justice Scalia's opinion in *W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp.*, —— U.S. ——, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). In *Kirkpatrick* the plaintiff, an American corporation that unsuccessfully bid on a public works contract in Nigeria, sued the defendant, an American corporation that was the successful bidder on the contract. The plaintiff brought suit for damages, and contended that the defendant, which had pled guilty to violations of the Foreign Corrupt Practices Act of 1977, had paid bribes to Nigerian officials in order to obtain the contract. *See id.* 110 S.Ct. at 702-03. The defendant moved to dismiss, contending that the suit was barred by the act of state doctrine. The district court granted the motion to dismiss. The Court of Appeals for the Third Circuit, however, reversed, and the Supreme court granted the defendant's writ of certiorari. *See id.* at 703-04.

In *Kirkpatrick*, the Supreme Court noted that, in prior opinions, several Justices had suggested an exception to the act of state doctrine for commercial transactions. *See id.* at 704 (citing *Alfred Dunhill*, 425 U.S. at 695-706, 96 S.Ct. at 1861-1867 (opinion of White, J.)). The Court

stated that, apart from any exceptions, the act of state doctrine does not apply in *Kirkpatrick*, since "[n]othing in the present suit requires the court to declare invalid, and thus ineffective as 'a rule of decision for the courts of this country,' the official act of a foreign sovereign." *Id.* (quoting *Ricaud v. American Metal Co.*, 246 U.S. 304, 310, 38 S.Ct. 312, 314, 62 L.Ed. 733 (1918)).

The present application of the doctrine of foreign sovereign immunity was significantly influenced by the shift or change in United States policy announced in the May 19, 1952 letter from the Acting Legal Adviser of the Department of State to the Acting Attorney General. After referring to the classical or "absolute" theory of sovereign immunity, the letter stated that "'it will hereafter be the Department's policy to follow the restrictive theory of sovereign immunity in the consideration of requests of foreign governments for a grant of sovereign immunity.'" 26 Dep't St.Bull. 984, 985 (1952) (quoting Letter from Jack B. Tate, Acting Legal Adviser, Department of State, to Acting Attorney General Phillip B. Perlman (May 19, 1952)).

The restrictive theory of sovereign immunity which was embraced by the 1952 policy grants immunity to a foreign sovereign only for acts characterized as "public" and not as to those deemed "private." According to the modern theory, a state may be held liable in the courts of another nation if "it engages in an industrial, commercial, financial or other business enterprise in which private persons may there engage, or does an act there in connection with such an enterprise wherever conducted, and the proceeding is based upon the conduct of such enterprise or upon such act." Article 11, Draft Convention on Competence of Courts in Regard to Foreign States, *quoted in* Re, *Judicial Developments in Sovereign Immunity and Foreign Confiscations*, 1 N.Y.L.Forum 160, 167 (1955).

In the Restatement, it is stated that under the act of state doctrine the courts of the United States "will generally refrain from . . . sitting in judgment on other acts of a governmental character done by a foreign state within its own territory and applicable there." Restatement (Third) of Foreign Relations § 443(1) (1987). It has been noted, however, that the effect of the Restatement "has been to present the act of state doctrine as broader in scope, more general in application, more preclusive of international law, and less susceptible of limitation than is warranted by governing authority." Leigh, *Sabbatino's Silver Anniversary and the Restatement: No Cause for Celebration*, 24 Int'l Law. 1, 13-14 (1990). *See also* Olmstead, *Special Review Essays: The Restatement (Third) of the Foreign Relations Law of the United States—Jurisdiction*, 14 Yale J. Int'l L. 468, 481-82 (1989).

In 1976, Congress enacted the Foreign Sovereign Immunities Act (the FSIA). *See* 28 U.S.C. §§ 1602-1611 (1988). As noted by Professor Hans Smit, the FSIA represented "an attempt at comprehensive statutory regulation of jurisdictional immunities of foreign states and their agencies and instrumentalities." Smit, *The Foreign Sovereign Immunities Act of 1976: A Plea For Drastic Surgery*, *reprinted in* American Society of International Law, Proceedings of the 74th Annual Meeting 49, 49 (1980).

According to the Report of the Judiciary Committee of the House of Representatives, the FSIA was enacted "to provide when and how parties can maintain a lawsuit against a foreign state or its entities in the courts of the United States and to provide when a foreign state is entitled to sovereign immunity." H.R.Rep. No. 1487, 94th Cong., 2d Sess. 6, *reprinted in* 1976 U.S.Code Cong. & Admin.News 6604, 6604. The House Report also notes that the FSIA was intended to codify the principle of international law that a sovereign state is entitled to immunity only for *jure imperii*, its public acts, but not for *jure gestionis*, its commercial or private acts. *See id.* at 7, 1976 U.S.Code Cong. & Admin.News at 6605.

The FSIA provides that:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States . . . .

28 U.S.C. § 1605(a)(2) (1988). Under the FSIA, a "commercial activity carried on in the United States by a foreign state" is defined as a "commercial activity carried on by such state and having substantial contact with the United States." 28 U.S.C. § 1603(e) (1988).

In this case, Nelson contends that the district court has subject matter jurisdiction under the first clause of section 1605(a)(2), since "the action is based upon a commercial activity carried on in the United States by the foreign state . . . ." More specifically, Nelson states that "[t]he arbitrary prolonged detention and the physical torture of Mr. Nelson . . . is based directly upon the recruitment activity carried on in the United States by agents of Saudi Arabia."

In order to conclude that there is subject matter jurisdiction under the first clause of section 1605(a)(2), the court must find that Saudi Arabia's recruitment and hiring of Nelson, in the United States, was a "commercial activity," within the meaning of the FSIA. The FSIA provides that "[t]he commercial character of an activity

shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." 28 U.S.C. § 1603(d) (1988). *See also De Sanchez v. Banco Central de Nicaragua*, 770 F.2d 1385, 1391 (5th Cir. 1985).

Citing *Zedan v. Kingdom of Saudi Arabia*, 849 F.2d 1511 (D.C. Cir. 1988), Saudi Arabia asserts that the mere recruitment of an employee in the United States is an insufficient contact on which to base subject matter jurisdiction under the FSIA. In *Zedan*, the plaintiff, while in the United States, received a phone call recruting him to work on a project in Saudi Arabia for a company which was not an agency of the Saudi government. *See id.* at 1512. After the plaintiff had worked on the project for two different companies for approximately three years, the project was taken over by an agency of the Saudi government. Several months later, after completing his employment, but without receiving total payment, the plaintiff returned to the United States. The plaintiff then sued Saudi Arabia, seeking money due him under his contract of employment. The district court granted Saudi Arabia's motion to dismiss. *See id.*

On appeal, the Court of Appeals for the District of Columbia Circuit agreed that the district court lacked subject matter jurisdiction, and affirmed. In its jurisdictional analysis under the first clause of section 1605(a)(2), the court stated that the phone call recruiting the plaintiff was merely a "preliminary step" or a "precursor" to a commercial transaction. *See id.* at 1513. Hence, the court concluded that "[t]he link between a recruitment phone call in [the United States] and the [intervention of the Saudi government] two-and-one-half years and two employers later is, in our view, too attenuated to constitute a 'direct causal connection.'" *Id.* at 1514.

In the present case, however, it is clear from the record that the recruitment and hiring of Nelson, in the United

States, was part of a process having "substantial contact with the United States." The recruitment was conducted by the Hospital Corporation of America (HCA), which in 1973 contracted with the Royal Cabinet of the Kingdom of Saudi Arabia to recruit employees for the Hospital. HCA, a corporation organized under the laws of the Grand Cayman Islands, is the wholly owned subsidiary of an American corporation. The contract created an agency relationship between HCA and Saudi Arabia. Under the contract, HCA was empowered to "recruit and employ administrative, nursing, technical, maintenance and all other personnel with full authority to initially set and subsequently adjust their salaries and other remuneration, to supervise such employees, and in its sole judgment, to terminate the employment of any such personnel." In addition, the contract expressly provides that all "employment contracts will be between [Saudi Arabia] and the employee, but may be executed for [Saudi Arabia] by HCA as agent." The contract also states that "[a]ll expatriate personnel recruited must be acceptable to [Saudi Arabia] which acceptability shall be evidenced by issuance of an entrance visa."

On the facts presented we agree with Nelson that the recruitment and hiring in the United States constituted a "commercial activity" of Saudi Arabia, within the meaning of the FSIA. Nevertheless, in order to establish subject matter jurisdiction under the FSIA, the court must also conclude that the detention and torture of Nelson, in Saudi Arabia, were "based upon" Nelson's recruitment and hiring in the United States.

Judicial authority reveals that a claim is "based upon" the commercial activity of a foreign state when there is a "jurisdictional nexus" between the acts for which damages are sought, and the foreign sovereign's commercial activity.

For example, in *Vencedora Oceanica Navigacion, S.A. v. Compagnie Nationale Algerienne de Navigation*, 730

F.2d 195 (5th Cir. 1984), the plaintiff, the owner of a vessel, sued the defendants, an agent of the Algerian government and the Republic of Algeria, to recover for the loss of the vessel. The district court granted the defendant's motion to dismiss. On appeal, the plaintiff asserted subject matter jurisdiction under the first clause of section 1605(a)(2). *See id.* at 199.

The court in *Vencedora* noted that the courts had varying interpretations of the jurisdictional reach of the first clause of section 1605(a)(2). *See id.* at 199-200. After reviewing four different formulations of the jurisdictional scope of the first clause of section 1605(a)(2), the court adopted the nexus approach. Under the nexus view or requirement, there is subject matter jurisdiction if there is a "nexus" between the acts giving rise to liability, and the commercial activity carried on by the foreign state in the United States. *See id.* at 202. *See also De Sanchez*, 770 F.2d at 1391 (subject matter jurisdiction under section 1605(a)(2) requires a "jurisdictional nexus with the United States").

In addition, the Court of Appeals for the Ninth Circuit has held that there is subject matter jurisdiction under the first clause of section 160(a)(2) if there is "a nexus between the defendant's commercial activity in the United States and the plaintiff's grievance." *America West Airlines, Inc. v. GPA Group, Ltd.*, 877 F.2d 793, 796 (9th Cir.1989). Similarly, the Court of Appeals for the Third Circuit has stated that "[i]t is essential that there be a nexus between the plaintiffs' grievance and the sovereign's commercial activity." *Velidor v. L/P/G Benghazi*, 653 F.2d 812, 820 (3d Cir.1981). *Cf. Gould, Inc. v. Pechiney Ugine Kuhlmann*, 853 F.2d 445, 452 (6th Cir. 1988) (subject matter jurisdiction under section 1605(a)(2) requires "a connection" between the commercial activity and the act complained of in the suit.)

This jurisdictional nexus requirement between the act complained of or grievance, and the commercial activity

or business enterprise conducted by the foreign state is salutary and necessary to satisfy both the congressional policy of the FSIA and sound principles of comity. The nexus requirement implies a bond or link that connects the foreign state to the wrongful act for which it is sought to be held liable. It is comparable to the requirement that there be a causal connection in order to impose liability in the civil law of torts. The jurisdictional nexus requirement of the FSIA finds a domestic parallel in the requirement of a nexus in the application of long-arm statutes. *See, e.g., American Express Int'l, Inc. v. Mendez-Capellan*, 889 F.2d 1175, 1178-79 (1st Cir.1989).

Saudi Arabia contends that the district court lacks subject matter jurisdiction under the FSIA since Nelson's claims "are based upon the governmental exercise of police power in a foreign country." Saudi Arabia asserts that "[t]he claims are based upon the acts of the Saudi police and prison officials—'governmental' acts beyond the reach of the commercial activity exception."

In support of its contention, Saudi Arabia cites *Arango v. Guzman Travel Advisors Corp.*, 621 F.2d 1371 (5th Cir.1980). In *Arango*, the plaintiffs contended that they suffered injuries when their vacation tour, which was sponsored in part by the defendant, the national airline of the Dominican Republic, was terminated. The plaintiffs asserted that, because their names were on a list of undesirable aliens, upon their arrival in the Dominican Republic immigration officials denied them entry into the country, "man-handled" them, and "involuntarily rerouted" them to the United States. *See id.* at 1373. The plaintiffs sought damages under breach of contract and several tort claims, including false imprisonment and battery. The district court granted the defendant's motion to dismiss on all claims. *See id.* at 1374.

The Court of Appeals for the Fifth Circuit dismissed the appeal because, under Rule 54(b) of the Federal Rules of Civil Procedure, the order granting the defen-

dant's motion to dismiss was not a final order. *See id.* at 1377-78. Notwithstanding its dismissal of the appeal on separate procedural grounds, the court of appeals discussed the applicable substantive law, and, "in the interest of expediency, proceed[ed] to offer [the district] court some guidance in its further handling of these issues." *Id.* at 1378. The court considered whether there was subject matter jurisdiction, under the first clause of section 1605(a)(2), for the claims of false imprisonment and battery. The court stated that in "man-handling" the plaintiffs during the denial of their entry into the country, the defendant "acted merely as an arm or agent of the Dominican government in carrying out his assigned role, and, as such, is entitled to the same immunity from any liability arising from that governmental function as would inure to the government, itself." *Id.* at 1379. The court, however, concluded that the defendant's actions which gave rise to the claims for breach of warranty and breach of contract were connected to the defendant's commercial activity. Hence, the district court would have had subject matter jurisdiction over these claims under section 1605(a)(2) of the FSIA. *See id.* at 1379-80.

Saudi Arabia also cites *Gregorian v. Izvestia*, 871 F.2d 1515, 1521-22 (9th Cir.), *cert. denied*, —— U.S. ——, 110 S.Ct. 237, 107 L.Ed.2d 188 (1989). In *Gregorian*, the plaintiffs brought suit against the defendant *Izvestia*, a newspaper of the Soviet government, contending that they were libelled by an article published in *Izvestia* which, according to the plaintiff, was written and published so that agencies of the Soviet government could "avoid contractual obligations to plaintiffs resulting from alleged promises to pay for medical equipment transported to the Soviet Union by plaintiffs." *Id.* at 1516. The plaintiffs contended that the libel was a "commercial activity," within the meaning of the FSIA, since it "was published with the *purpose* of injuring plaintiffs by avoiding commercial obligations." *Id.* at 1521 (emphasis in original).

The court noted that, under the FSIA, the court must look to the "nature" of the activity at issue, rather than its purpose. *See id.* (citing 28 U.S.C. § 1603(d)). The court found that because *Izvestia* articles are " 'official commentary of the Soviet government,' " publishing and writing them " 'constitutes an activity whose essential nature is public or governmental.' " *Id.* (quoting *Yessenin-Volpin v. Novosti Press Agency*, 443 F.Supp. 849, 856 (S.D.N.Y.1978)). Hence, the libel claim was dismissed for lack of subject matter jurisdiction under section 1605(a)(2). *See id.* at 1522.

In the case of Nelson, however, we find that the detention and torture of Nelson are so intertwined with his employment at the Hospital that they are "based upon" his recruitment and hiring, in the United States, for employment at the Hospital in Saudi Arabia. In his complaint, Nelson alleged that, in the course of his duties, he discovered safety hazards at the Hospital and that he reported these hazards to an investigative body of the Saudi government. Nelson further asserted that as a result of those actions, "[h]e was summoned . . . by agents or employees of [the Hospital] to the [H]ospital's security office from which he was transported to a jail cell, shackled, tortured and beaten by agents or employees of SAUDI ARABIA . . . ."

Unlike the facts in *Arango*, in this case the actions of Saudi Arabia resulted from and were directly attributable to Nelson's employment. Furthermore, the Hospital's job description for monitoring systems engineer, the specific position for which Nelson was recruited and hired in the United States, including recommending modifications to existing equipment. The Hospital's job description also states that a monitoring systems engineer "[a]ssures compliance with safety regulations[,]" and "[t]roubleshoots problems and implements corrective action." Hence, detecting and reporting safety violations at the Hospital

was a required employment duty for the position for which Nelson was recruited and hired in the United States.

Saudi Arabia, however, asserts that the actions taken against Nelson were the result of Nelson's submission of a false diploma from the Massachusetts Institute of Technology in his application for employment. In making this argument, Saudi Arabia in effect admits the nexus between Nelson's recruitment in Florida and his detention and torture in Saudi Arbia, and supports Nelson's claim of subject matter jurisdiction.

There is also a separate question as to whether the district court properly dismissed Nelson's claim against Royspec. Nelson asserts that Royspec, an instrumentality of the Saudi government, is within the subject matter jurisdiction of the court, under the FSIA, since it "was directly involved in the recruitment of Mr. Nelson."

It is undisputed that Royspec, derived from Royal Specialist Purchasing Services, was founded by the Hospital in 1979. It is also undisputed that Royspec maintains an office in Maryland, and acts as the purchasing agent for the Hospital, in the United States. Furthermore, Nelson was given the phone number of Royspec's Maryland office so that his family could contact him, while he was in Saudi Arabia, in the event of an emergency. We also note that four telegrams, all of which acknowledge Nelson's employment, contain the telex designation "ROSPEC," which, according to Nelson, may be the designation for Royspec. Although Saudi Arabia denies that the designation "ROSPEC" represents Royspec, on the record before the court and under the FSIA, we conclude that Royspec is within the subject matter jurisdiction of the court.

Finally, our holding is not based upon the act of state doctrine but on the interpretation and application of the FSIA. On the facts presented we hold that the district

court erred in determining that it did not have subject matter jurisdiction.

CONCLUSION

Since we conclude that, on the facts presented, the recruitment and hiring of Nelson in the United States was a "commercial activity" of the Saudi government, and that Nelson's subsequent detention and torture were "based upon" Nelson's recruitment and hiring in the United States, the district court erred in determining that there was no subject matter jurisdiction under the FSIA. Accordingly, we REVERSE the judgment of the district court, and REMAND the case.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

(Title Omitted in Printing)

STATEMENT OF INTEREST OF THE UNITED STATES IN SUPPORT OF REHEARING AND SUGGESTION FOR REHEARING IN BANC

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CERTIFICATE OF INTERESTED PERSONS

The United States, as *amicus curiae*, adds the following names to the certificates previously filed by the parties:

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Douglas Letter

Department of State attorneys:

Edwin D. Williamson
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REQUIRED STATEMENT FOR IN BANC SUGGESTION

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following precedent of this circuit, and consideration by the full Court is necessary to secure and maintain uniformity of decisions in this Court: *Arango* v. *Guzman Travel Advisors Corp.*, 621 F.2d 1371 (5th Cir. 1980).

I also express a belief, based on a reasoned and studied professional judgment, that this appeal involves the following questions of exceptional importance:

1. Whether inherently sovereign law enforcement activities of officials of a foreign state, carried out in that country, can be challenged in United States courts under the commercial activities exception to sovereign immunity in the Foreign Sovereign Immunities Act.

2. Whether jurisdiction exists under the Foreign Sovereign Immunities Act to challenge non-commercial foreign state conduct when separate commercial conduct is used to establish the required nexus with the United States for jurisdiction under that statute.

/s/ Douglas Letter
Attorney of record for
amicus curiae United States

TABLE OF CONTENTS

	Page
INTEREST OF THE UNITED STATES	1
STATEMENT	5
1. The FSIA Scheme	5
2. This Litigation	6
REASONS FOR GRANTING REHEARING	9
CONCLUSION	15
CERTIFICATE OF SERVICE	16

TABLE OF AUTHORITIES

Cases:

*Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371 (5th Cir. 1980)	9, 10
Argentine Republic v. Amerada Hess Shipping Co., 488 U.S. 428 (1977)	2, 6
Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (*in banc*)	9
*de Sanchez v. Banco Central de Nicaragua, 770 F.2d 1385 (5th Cir. 1985)	6, 13
*Gregorian v. Izvestia, 871 F.2d 1515 (9th Cir.), *cert. denied*, 110 S.Ct. 237 (1989)	11
Herbage v. Meese, 747 F. Supp. 60 (D.D.C. 1990)	12
Jackson v. People's Republic of China, 794 F.2d 1490 (11th Cir. 1986), *cert. denied*, 480 U.S. 917 (1987)	5
*Letelier v. Republic of Chile, 748 F.2d 790 (2d Cir. 1984), *cert. denied*, 471 U.S. 1125 (1985)	5, 14
Millen Industries, Inc. v. Coordination Council for North American Affairs, 855 F.2d 879 (D.C. Cir. 1988)	13
MOL, Inc. v. The People's Republic of Bangladesh, 736 F.2d 1326 (9th Cir.), *cert. denied*, 469 U.S. 1037 (1984)	13

* Authorities chiefly relied upon are marked by asterisks.

TABLE OF AUTHORITIES—Continued

	Page
Nelson v. Hospital Corp. of America, No. 88-0484-CIV-Nesbitt (S.D. Fla. Nov. 1, 1990)	8
Practical Concepts Inc. v. Republic of Bolivia, 811 F.2d 1543 (D.C. Cir. 1987)	3
*Stena Rederi AB v. Commission de Contratos del Comite, 923 F.2d 380 (5th Cir. 1991)	14
Tucker v. Whitaker Travel, Ltd., 620 F. Supp. 578 (E.D. Pa. 1985), *aff'd*, 800 F.2d 1140 (3d Cir.), *cert. denied*, 479 U.S. 986 (1986)	11-12
Statutes	
28 U.S.C. 517	1
Foreign Sovereign Immunities Act:	
28 U.S.C. 1602 *et seq.*	2
28 U.S.C. 1603(d)	6
28 U.S.C. 1605(a)(2)	6
28 U.S.C. 1605(a)(5)	6
Rule	
Federal Rule of Appellate Procedure 29	1
Legislative Materials:	
H.R. Rep. 94-1487, 94th Cong., 2d Sess. (1976)	11
S. Rep. 94-1310, 94th Cong., 2d Sess. (1976)	11

* Authorities chiefly relied upon are marked by asterisks.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

(Title Omitted in Printing)

STATEMENT OF INTEREST OF THE UNITED STATES IN SUPPORT OF REHEARING AND SUGGESTION FOR REHEARING IN BANC

INTEREST OF THE UNITED STATES

The United States files this Statement of Interest pursuant to 28 U.S.C. 517, which authorizes the Attorney General to attend to the interests of the United States in any pending suit, and Federal Rule of Appellate Procedure 29, permitting *amicus curiae* filings by the United States. We support rehearing and *in banc* consideration because the panel's opinion incorrectly applies an important federal statute with major foreign policy ramifications.

This case involves a suit filed in federal district court by two American citizens against a foreign state—Saudi Arabia—and two of its instrumentalities concerning the police activities of that state. A panel of this Court reversed the decision by the district court and found jurisdiction to sue these foreign defendants in a United States court under one part of the commercial activities section of the Foreign Sovereign Immunities Act (the FSIA) (28 U.S.C. 1602 *et seq.*).

The United States has a very substantial interest in the application of the FSIA, which is the only means by

which foreign states may be sued in United States courts. See *Argentine Republic* v. *Amerada Hess Shipping Co.*, 488 U.S. 428, 434 (1987). Foreign relations depend to a large extent on reciprocal treatment between two states. Thus, if police activities of foreign states are deemed commercial and questioned and punished in United States courts, it is likely that the law enforcement conduct of the United States will also be called into account in foreign courts. And, American law enforcement officials will have to appear in foreign courts to defend their conduct.

Further, if the prevailing law in this country is that foreign police activity can be judged in our courts by our standards, it will be difficult or impossible for the United States successfully to claim immunity elsewhere for its own such sovereign activities. Even when local foreign law would permit the United States to raise immunity defenses that would not be available under the FSIA, the United States nevertheless uses that statute as a standard for our own claims of immunity in foreign courts. Under this practice, the United States would be foreclosed from asserting immunity for claims in foreign courts involving our law enforcement activity.

Consequently, although Congress has in the FSIA clearly assigned to the federal courts the responsibility to determine whether foreign states may be sued here consistently with that statute, the Executive Branch—which is responsible for the foreign relations of the United States—has a keen interest in how the courts apply the law. The FSIA's "intent to deprive the Executive of a conclusive say in this area does not mean that the Executive is to avoid any role in the adjudicatory process." *Practical Concepts Inc.* v. *Republic of Bolivia*, 811 F.2d 1543, 1552 n.21 (D.C. Cir. 1987). The Executive Branch maintains a legitimate interest in the correct interpretation of the FSIA because of its foreign policy impact. *Id.* at 1545 n.2.

As described below, we believe that the panel decision here erroneously applies the FSIA in a serious way.

Plaintiffs' complaint focuses on the conduct of Saudi police authorities in arresting and jailing Scott Nelson. The panel deemed the charges justiciable because it found a "nexus" between the alleged tortious police activity of the Saudis and Saudi commercial activity in the United States.

But this reasoning is flawed because, although plaintiffs allege highly reprehensible conduct by Saudi officials, the fact remains that law enforcement activity is *sovereign* in nature. Congress had no intent in the FSIA to waive immunity, under the statute's commercial activities provision, for foreign governments to be sued here for their governmental acts such as police activities. Indeed, as far as we are aware, this is the first and only instance in which any federal court has found jurisdiction over foreign law enforcement activities under the FSIA commercial activities exception.

Substantial precedent from this Court and other courts of appeals supports our view, and casts grave doubt on the panel ruling.

Moreover, the panel separately erred in finding a sufficient nexus between the commercial activity in the United States and the conduct actually being challenged. Its ruling on this point is inconsistent with many other circuit decisions which make clear that the commercial activity providing the jurisdictional nexus with the United States must itself be the activity on which the lawsuit is based. Here, it is not.

We nevertheless wish to make clear at the outset that the United States takes *no* position regarding the underlying merits in this case. Plaintiffs have alleged beatings and torture by Saudi agents, activity that we strongly condemn. The record reveals, however, that there is sharp disagreement regarding the facts underlying plaintiffs' claims.

Officials from the United States Department of State have had extensive contact with both the plaintiffs and

with the Saudi government regarding this matter. We have attempted to assure that the plaintiffs will have an appropriate forum in which to present their claims. This process is ongoing. If it fails, the United States retains the option of espousing plaintiffs' claims against Saudi Arabia—if it finds them to have merit—as an official matter between the two governments.

Nevertheless, our position is that Congress did not make the types of claims at issue here cognizable in United States courts, and that the panel's interpretation of the FSIA is likely to cause serious difficulties for the United States in future cases brought in foreign courts.[1] We therefore urge that the panel grant rehearing or that the full Court hear this caes *in banc*.

STATEMENT

1. *The FSIA Scheme*

In *Jackson* v. *People's Republic of China*, 794 F.2d 1490, 1492-93 (11th Cir. 1986), *cert. denied*, 480 U.S. 917 (1987), this Court described the shift in the United States from granting absolute immunity to foreign states in the federal courts to a restrictive theory of immunity, under which immunity is confined to suits involving public acts of a foreign state. This restrictive theory was codified in the FSIA in 1976. *Id.* at 1493.

In that statute, Congress drew a critical distinction between the commercial acts of foreign states and their

[1] Because plaintiffs have alleged highly reprehensible conduct by a foreign state, this case calls to mind the observation by the Second Circuit in a difficult case also involving asserted henious activity, but in which foreign sovereign immunity was upheld, *Letelier* v. *Republic of Chile*, 748 F.2d 790, 791 (2d Cir. 1984), *cert. denied*, 471 U.S. 1125 (1985) ("How one wishes to decide a case comes lightly to mind, on a wing; but often how one must decide it comes arduously, weighed down by somber thought. To rule otherwise here would only illustrate once again that hard cases make bad law").

public or sovereign ones. "Where a foreign state's sovereign acts are the basis of a suit, the United States refrains from exercising jurisdiction out of respect for the defendant's coequal sovereign status." *de Sanchez* v. *Banco Central de Nicaragua*, 770 F.2d 1385, 1391 (5th Cir. 1985).

Relevant to this case is the FSIA waiver of foreign sovereign immunity for cases "in which the action is based upon a commercial activity carried on in the United States by a foreign state * * *." 28 U.S.C. 1605(a)(2). That is the section upon which jurisdiction was found by the panel here.

"[C]ommercial activity" is defined in the FSIA as "either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." 28 U.S.C. 1603(d).[2]

2. *This Litigation*

Plaintiff Scott Nelson is an American citizen who answered an advertisement concerning employment in Saudi Arabia in the King Faisal Specialist Hospital (the Hospital), a government instrumentality. The recruitment was conducted by the Hospital Corporation of America, an American company operating in this country under a contract with the Saudi government. See *Nelson* v. *Saudi Arabia*, 923 F.2d 1528, 1530 (11th Cir. 1991).

Nelson was interviewed in Saudi Arabia, and accepted employment as an engineer with the Hospital, signing the employment contract in the United States. As part of the

[2] The FSIA also contains a waiver for certain tort actions (28 U.S.C. 1605(a)(5)), but that section is not applicable here because it covers only cases in which the damage or loss occurs in the United States. See *Amerada Hess*, 488 U.S. at 439-41.

hiring process, Nelson submitted what he now concedes is a fraudulent diploma from the Massachusetts Institute of Technology. *Id.* at 1530, 1536.

Nelson began work at the Hospital in Saudi Arabia, and part of his job included monitoring equipment in the Hospital building. Nelson contends that in March 1984, he found a building safety hazard, which he reported to Saudi authorities. The Saudis meanwhile discovered the fraudulent nature of Nelson's diploma, and in September 1984 he was summoned to the Hospital security office. *Id.* at 1530.

Nelson contends that he was taken from the Hospital to a jail, where he was beaten and tortured by Saudi officials. He was incarcerated for 39 days and was released following his pardon by the Saudis after intervention by United States authorities. *Id.* at 1530.

Several years after returning to the United States, Nelson filed this action against Saudi Arabia, the Hospital, and a Saudi agency doing procurement business in this country. He claims serious physical injuries and raises a number of tort causes of action including battery, unlawful detainment, wrongful arrest and imprisonment, inhuman torture, and negligent failure to warn that these torts might occur.[3] The district court dismissed the complaint, finding a lack of sufficient ties between the alleged tortious conduct and any commercial conduct by the Saudis.

A panel of this Court then reversed that ruling in an opinion written by Chief Judge Re of the United States Court of International Trade, sitting by designation. 923

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[3] Nelson also sued the Hospital Corporation of America in a separate action which was dismissed under the statute of limitations and for contributory negligence stemming from Nelson's submission of the falsified diploma; that ruling is now on appeal to this Court. See *Nelson* v. *Hospital Corp. of America*, No. 88-0484-CIV-Nesbitt (S.D. Fla. Nov. 1, 1990).

F.2d at 1536. It found jurisdiction solely under the FSIA exception for commercial activity carried on in the United States by a foreign state. *Id.* at 1533.

The panel held that the "recruitment and hiring [of Nelson] in the United States constituted a 'commercial activity' of Saudi Arabia, within the meaning of the FSIA." *Ibid.* It then stated that cases applying the FSIA require that there be a nexus "between the acts for which damages are sought, and the foreign sovereign's commercial activity." *Id.* at 1534. The panel concluded that jurisdiction was present because "the detention and torture of Nelson are so intertwined with his employment at the Hospital that they are 'based upon' his recruitment and hiring, in the United States, for employment at the Hospital in Saudi Arabia." *Id.* at 1535.

Because there was this connection, the panel found jurisdiction under the commercial activities exception despite the fact that Nelson was complaining about police activities. *Id.* at 1534-35.

REASONS FOR GRANTING REHEARING

This is one of those rare instances in which rehearing is warranted because the panel opinion radically departs from established law and is at odds with Congress' intent. It is difficult or impossible to square the ruling here with the Court's precedent in *Arango* v. *Guzman Travel Advisors Corp.*, 621 F.2d 1371 (5th Cir. 1980)[4], and the opinion is inconsistent with a number of decisions by other circuits interpreting the FSIA.

1. In *Arango*, the plaintiffs there sued Dominicana, a state airline, after they were refused admission to the Dominican Republic by immigration officials, and were immediately rerouted elsewhere, being manhandled in the process. This Court first dismissed the appeal, but then

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[4] See *Bonner* v. *City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*in banc*).

issued guidance to the district court for its further handling of the case. Dominicana contended that it could not be sued for claims arising out of the acts of Dominican immigration officials, which are not commercial in nature, even though the airline admitted that it engaged in commercial activity in the United States and had carried the Arangos to the Dominican Republic.

The Court accepted this argument because Dominicana's actions regarding the rerouting of the Arangos was not commercial; the airline was merely pressed into the service of carrying out a governmental law enforcement function: refusal to allow entrance and bodily expelling the Arangos from the Dominican Republic. 621 F.2d at 1379.

As in the case at bar, the allegedly tortious activity was certainly connected with commercial activity since Dominicana flew the Arangos to the Dominican Republic on a paid ticket. Yet, the police activity of which the Arganos complained was not cognizable in a United States court because it was sovereign in nature, and was not the activity that provided the jurisdictional nexus to the United States. By contrast, the Court permitted other causes of action by the Arangos to go forward since they challenged conduct of a commercial kind. 621 F.2d at 1379-80.

The panel ruling at bar cannot be squared with *Arango* because it permits review of foreign law enforcement conduct, which is closely analogous to the activity which the Court there held could not be reviewed in United States courts.

2. In addition to being in conflict with *Arango*, the decision here is at odds with considerable precedent from other circuits which does not permit review of inherently sovereign activity—such as law enforcement conduct—under the commercial activities exception.

The legislative history of the FSIA shows that Congress did not intend any of the various clauses of the com-

mercial activities exception to remove immunity for essentially non-commercial acts. To the contrary, the relevant discussion in the House and Senate reports makes clear that Congress intended that only actual commercial activity itself be covered within this exception. See H.R. Rep. 94-1487, 94th Cong., 2d Sess. 16, 18-19 (1976); S. Rep. No. 94-1310, 94th Cong., 2d Sess. 18-19 (1976). Both reports speak of allowing suits for acts that are "commercial or private in nature." *Ibid.*

This congressional intent was recognized and applied by the Ninth Circuit in *Gregorian* v. *Izvestia*, 871 F.2d 1515, 1521-22 (9th Cir.), *cert. denied*, 110 U.S. 237 (1989), a case in which the United States also filed a statement of interest in order to call the court's attention to the sovereign nature of the activity involved.

In *Gregorian*, the plaintiff claimed that a Soviet Union publication had libeled him as part of a strategy to cheat him in a commercial venture; the libel was alleged to be directly related to commercial activity. Nevertheless, the Ninth Circuit held that determination of the contents of an official newspaper is a sovereign act rather than a commercial one, despite the fact that publication of a newspaper can be commercial. Because the actual activity challenged by the plaintiff was sovereign, it was not covered by the commercial activities exception in the FSIA. *Id.* at 1522. Accord *Tucker* v. *Whitaker Travel, Ltd.*, 620 F. Supp. 578, 584 (E.D. Pa. 1985) (decision on how to "police the activities of its citizens" is "peculiarly governmental and may not be subjected to scrutiny in United States courts"), *aff'd*, 800 F.2d 1140 (3d Cir.), *cert. denied*, 479 U.S. 986 (1986).

In another case closely analogous to this one, the court in *Herbage* v. *Meese*, 747 F. Supp. 60 (D.D.C. 1990), similarly found no jurisdiction under the FSIA for claims made against agents of the British government for assertedly wrongful extradition to the United States. The court held that a British constable, detective, and prosecutor were all carrying out sovereign functions in arresting and

extraditing the plaintiff. Citing *Arango*, the court determined that there was no waiver under the FSIA for this type of governmental law enforcement conduct. This conclusion held regardless of the plaintiff's allegations that the acts taken by the British police officers were "illegal" and "heinous." *Id.* at 66-67.

Here too, there is no jurisdiction under the FSIA commercial activities exception to immunity because the acts at issue were plainly governmental. Nelson attacks the police conduct of Saudi officials in arresting and confining him. This type of conduct is clearly sovereign rather than commercial; in contrast to commercial activity, it can be carried out only by a government. It is, therefore, not covered by the FSIA commercial activities exception, regardless of whether or not it is intertwined with commercial activity.[5]

As explained in the opening section of this brief, a contrary conclusion is against congressional intent. And, it must be recognized that review of this kind of sovereign activity by a United States court would require examination of Saudi police officials here, as well as questioning in our courts their conduct of police activities in their own country. The panel's ruling is thus likely to expose the United States' own law enforcement conduct to judicial scrutiny in foreign courts.

Numerous cases make clear that it makes no difference for FSIA purposes whether the governmental activity in question is intertwined with commercial activity.

For example, in *de Sanchez*, 770 F.2d at 1391-92, the Fifth Circuit found no jurisdiction when a plaintiff sued to collect on a check issued by the Nicaraguan Central Bank for payment of a certificate of deposit payable in

[5] Nelson has also alleged a cause of action for failure to warn that he may be subjected to the type of wrongful conduct that he alleges. However, since that cause of action would require review of the sovereign police activities, the failure to warn claim should not stand on its own.

U.S. dollars. The stop payment order was made by the same Central Bank based on then-current policies regarding preservation of foreign exchange reserves. That act clearly had a nexus to the commercial activity of sale of the certificate of deposit, and the usually commercial activity of sale of foreign currency. But that connection was not sufficient because the key activity was the sovereign one of determining not to honor the payment check. Accord, *Millen Industries, Inc.* v. *Coordination Council for North American Affairs*, 855 F.2d 879, 884-85 (D.C. Cir. 1988); *MOL, Inc.* v. *The People's Republic of Bangladesh*, 736 F.2d 1326, 1328 (9th Cir.), *cert. denied*, 469 U.S. 1037 (1984).

And, in *Letelier*, the Second Circuit declined to approve execution against the Chilean national airline in a case concerning assassination of a former Chilean ambassador in the United States, and airline personnel were assertedly involved in the plot. 748 F.2d at 797. The airline clearly engaged in commercial activity here, but the act in question was a governmental one—state sponsored assassination. That act was immune under the FSIA even though airline personnel had allegedly taken actions—such as providing transportation—to make the assassination possible. *Id.* at 794. Citing this Court's decision in *Arango*, the Second Circuit focused on the allegedly wrongful activity itself, and held that any participation by the airline in the plot was not commercial in nature. *Id.* at 797-98.

The ruling here is firmly at odds with these holdings.

3. Additionally, the panel here erred in concluding that there is a sufficient connection between the allegedly tortious conduct of the Saudi police officials and the commercial activity found to occur in the United States. In finding such a connection, the panel applied an analysis rejected by other courts of appeals.

For example, in *Stena Rederi AB* v. *Comision de Contratos del Comite*, 923 F.2d 380 (5th Cir. 1991), the

Fifth Circuit made clear that FSIA jurisdiction *cannot* be based merely on activity that is intertwined with commercial activity. Rather, the court explained—relying on *Arango*—that "[i]n order to satisfy the commercial activities exception to sovereign immunity, the commercial activity that provides the jurisdictional nexus with the United States must also be *the activity on which the lawsuit is based.*" *Id.* at 387. Accord *ibid.* ("[b]ecause Pemex's commercial acts do not form the basis for Stena's complaints, the commercial activities exception does not apply").

Here, the commercial activity relied upon by the panel is the recruitment and hiring of Nelson in the United States. Nelson's claims are based not on those activities, but on the actions of the Saudis who jailed him. Thus, the nexus between the relevant commercial activity and the allegedly tortious conduct is *not* the same as the connection between the commercial activity and the United States. The panel confused this key difference.

CONCLUSION

For the foregoing reasons, as *amicus curiae*, the United States urges that the panel rehear this case, or that the full Court consider it *in banc*.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

(Title Omitted in Printing)

ON PETITION FOR REHEARING AND SUGGESTION OF REHEARING EN BANC

(Filed July 1, 1991)

Before: EDMONDSON and BIRCH, Circuit Judges, and RE*, Chief Judge.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion of Rehearing En Banc is DENIED.

The decision in this case does not purport to address the applicability of the act of state doctrine to this case. This issue is open for the consideration of the district court on remand.

ENTERED FOR THE COURT:

/s/ J. L. Edmondson
United States Circuit Judge

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* Honorable Edward D. Re, Chief Judge of the United States Court of International Trade, sitting by designation, has retired from federal service and took no part in deciding the pertinent petition or suggestion. The petition was decided by a quorum. *See* 28 U.S.C. § 46(d); 11th Cir. R. 34-2(a).